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State, Power, Administration:
Marxist and Foucauldian Perspectives on
State Development in Britain,
1832-1918

by

Mark Neocleous

A Thesis submitted in partial fulfilment of
the requirements for the degree of Doctor of
Philosophy at Middlesex University

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Abstract

This thesis seeks to contribute an original account of state power by reconceptualising the state-civil society distinction through the category of political administration. Through an analysis of the development of the state in Britain between 1832 and 1918 it seeks to show why such a reconceptualisation is necessary and the features which distinguish it from other accounts. This task is performed via an immanent critique of the work of Hegel, Marx and Foucault. It is argued that historical materialism has lost the recognition of the constitutive power of the state found in Hegel and Marx, a recognition which needs to be recuperated in order for an adequate theoretical account of state power to be sustained. From 1832 in Britain this constitutive power was expressed in the development of new administrative mechanisms through which the state ordered and structured civil society. The threefold function of political administration - the fashioning of labour power, the subsumption of struggle and the constitution of legal subjects - place it with law at the heart of the operation of state power, and it is this that political theory in general, and historical materialist theory in particular, need to recognise. The category of political administration is developed through a critique of Foucault's account of administration which, it is argued, lacks an understanding of the political. It is argued that political administration emerges as a response to class struggle and that from 1832 the British state was shaped through this struggle; this use of struggle is counterposed to Foucault's category of resistance.

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Introduction

The 1970s and 1980s saw a substantial increase in the amount of theoretical work on the state, both within and outside of Marxism. The Poulantzas-Miliband debate, the state-derivation debate and discussion of crisis were all attempts to rethink the 'problem' of the state within Marxism. Outside Marxism the emergence of neo-liberal and libertarian writings, such as those of Robert Nozick, placed the state at the centre of their analysis, as did the more authoritarian conservative strands of the 'New Right'.¹

This was a veritable explosion of work on the state. It experienced its own version of a backlash. In an essay highly critical of the usage of the state concept in political theory David Easton suggests that as a tool for research the state is part of a conceptual fad, participated in by Marxists, particular types of conservatives, and neo-liberals, which merely provides a buzz-word and a sense of legitimacy but not much else to social and political research. Debates involving the state concept are vapid, ending in a semantic morass. Exemplifying this semantic morass is the work of Poulantzas where the outcome is the declaration of the state as an 'undecipherable mystery'. For Easton this exemplifies the conceptual opacity and cumbersomeness of the use of the state as a tool of analysis. The suggestion he makes is that political analysis would achieve great theoretical benefits from a shift in conceptual focus away from the state.² Easton's alternative, systems analysis, need not concern us here. I use it as an example of just one of several currents in political thought that have sought to reject the state concept.³ For the recent focus on the state has provoked a variety of approaches that have sought to work without a concept of the state altogether.

One of these new theoretical approaches involves a shift of focus away from the state to 'civil society'. This literature has both a theoretical and practical point. The practical input has come from the range of forces, groups and organisations that have emerged from 'civil society' in both Western and Eastern Europe. In particular, the literature has focused on the way that Eastern European regimes were undermined by social movements within civil society: the typical example here is Solidarity in Poland. This 'model' is said to operate equally in Western

Europe, though for obvious reasons towards different ends. Nonetheless it is claimed that the new social movements need to utilise the concept 'civil society' as part of the shift to a radicalised democracy.⁴ These writers often point to the excessive attention that the state has received, especially within Marxist and socialist literature, and argue that this has resulted in a skewed focus, in which the state receives all the attention whilst civil society receives none.

A second approach takes as its point of departure the work of Michel Foucault. Foucault rejects the state-civil society distinction altogether, and those working within a Foucauldian theoretical framework have continued in this vein by suggesting that rather than refocus the analysis away from the state and onto civil society, we need to reject such binary oppositions. Here, the state-civil society model is itself part of the problem and a coherent analysis of power needs to reject it rather than reformulate it.

The analysis developed in this thesis differs significantly from both these accounts, and seeks in part to offer a critique of them. It recognises the strength of some of the criticisms of a classical Marxist account proposed from these positions, in particular the crude nature of an economic approach or one that conceives of the state only in terms of bodies of armed men and Parliament (of which more below), but it seeks to overcome a number of the problems they raise. The argument is that the state remains central to our understanding of politics and power. Yet, as Poulantzas points out, there can be no theory of the state that is not simultaneously an analysis of its presence in the constitution and reproduction of the relations of production.⁵ The state concept, it will be argued, only makes sense if one uses it in conjunction with 'civil society'. By retaining the state-civil society dichotomy as a conceptual distinction this thesis is situated at a critical distance from the work of Foucault and those who seek to use a Foucauldian conceptual schema. Yet at the same time it recognises that Foucault's rejection of the state-civil society distinction is based on a substantial series of historical developments in the exercise of power. It is for this reason that the category 'administration' becomes increasingly important. Foucault's development of the concept 'administration' as a response to the transformation he regards as occurring in the exercise of power in Europe during the nineteenth century is a step in one right

direction: administration now exists alongside law as the fundamental mechanism mediating civil society and class struggle.

Reasserting the need for the state-civil society distinction, and asserting its centrality to materialist analysis, this work also seeks to break with particular traditions within Marxism, traditions which have either ignored the model, focused entirely on the state, or reduced the model to a crude economism. This does not mean that we should focus exclusively on civil society to the detriment of state power. Rather, the argument is that one needs to consider *both* state *and* civil society, and to theorise them in *relation to each other*. Yet whilst the state-civil society dichotomy needs to be retained, it also needs to be *rethought*. It needs to be rethought by developing a concept of political administration as a mediation between state and civil society which is also a product of class struggle. In other words, what is attempted here is the development of a theoretical approach to the state through a *reconceptualisation of the state-civil society distinction using a category of political administration, rooted in struggle*.

One of the features of this account is that it reasserts the power of the state within the state-civil society model. The state, far from being dismissed as an epiphenomenon of the economic, is granted the status it warrants given its constitutive power over civil society. Yet at the same time the state can be read as the outcome of struggles within civil society. These struggles will be seen to have an effect on the institutional materiality of state power, resulting in the emergence of a set of administrative mechanisms to mediate class struggle and subsume it under the auspices of state power.

Now, it is undoubtedly the case, as Noberto Bobbio suggests, that Marxists have often operated under the illusion that the first task when dealing with any problem is to go and find out what Marx has said. The difficulty with this is that instead of developing a theory of the state one becomes engaged in exegesis of the ‘classical’ Marxist texts. Once their content has been ascertained and assured, it is assumed that a Marxist theory can be read off from it.⁶ Yet, as is well known, Marx failed to develop a full-length theory of the state. The most that one can find are scattered fragments throughout his work. This should have worked to the advantage of Marxism, creating as it does an open space for new theoretical work: especially

advantageous given the new developments in state power that were to occur in the late nineteenth and early twentieth centuries.

The chapters below seek to argue that although Marx offered no theoretical work on the state, and because of historical developments one cannot simply ‘read off’ a Marxist account or ‘piece one together’, there is within Marx’s work a set of categories that are crucial for the development of theoretical work on the state. These are ‘state’, ‘civil society’ and ‘administration’. Each needs to be considered within the context of historical developments in the political economy of bourgeois society and the nature of class struggle. These categories need to be developed in two ways. One is by going forwards from Marx to examine the historical changes between state and civil society; the other is by going backwards from Marx to examine the theoretical problem as Marx adopts it from Hegel. To put this another way: rather than search for the elements of a Marxist theory of the state in Lenin, there is more fruitful searching to be done in Hegel.

In his work State Theory Bob Jessop distinguishes between ‘strong’ and ‘weak’ theories. The former ‘would provide an integrated account of the state in terms of a single set of causal mechanisms. It would explain all the institutional and operational features of a state in a given conjuncture’. In contrast a ‘weak’ theory would be ‘a useful set of theoretical guidelines or orientations which would inform a Marxist analysis without trying to explain everything in a deterministic manner’. Instead it would ‘point us to the most important factors which conjointly shape that complex synthesis of multiple determinations formed by the modern state and state power in its various domains of influence’.⁷ Jessop suggests that it is impossible to develop a strong theory, but that even in constructing theories in the weaker sense Marxists have failed, both conceptually and presentationally. In the former sense there has been a severe limitation in the concepts used, whilst in the latter sense many theories are barely comprehensible.

Using this distinction it could be suggested that the argument in the following chapters offers a theory in the weak sense; it seeks only to search for concepts adequate for political analysis, and to tentatively show how they might be used. However, in the process it will be shown that Marxism *can* develop concepts equal to the complexities of state power. The concepts are coherent and, in the use of the

category political administration, offer the foundation for the analysis of the development of administration as a mediating form between state and civil society. The institutional materiality of administrative forms can then be specified and studied in their concrete historical particularity, including their place within the framework of law. A subsidiary argument that is also present in this thesis is that class struggle must be central to the analysis. This is an explicit theoretical orientation which does not seek to explain everything in a deterministic manner. It seeks to go beyond the drawn out and often sterile debates as to the question ‘Is there a Marxist Doctrine of the State?’,⁸ to ask what the state does and how it does it, the kind of question which draws our attention to specific states in specific periods. Nonetheless, this requires the theoretical tools adequate for comparative analysis.

In choosing 1832-1918 as the object of analysis in Part III, I seek to explore the period in which the working class was incorporated into the body politic in Britain, a process completed by 1918, following the assumption of political power by the bourgeois class in 1832. Whilst these are the years in which two key Acts of Parliament incorporated the bourgeois and working class respectively, it is also between these dates that administration becomes politicised and used by the state for the three-fold purpose traced in Chapter Five - the fashioning of labour power, the subsumption of struggle and the constitution of legal subjects. Though Chapter Five is ‘historical’ in character the orientation of the work is explicitly theoretical. The concern is not to reveal new historical material, but to consider which concepts best interpret the changes that occurred during this period. The chapter therefore builds on the critique of alternative theoretical accounts of this period developed in Chapter Four, where the argument for taking administration to be central to our understanding of the political is also developed. The discussion is limited to the development of the *British* state and, within this, the place of the *English* working class.⁹

The account builds on the theoretical work in Parts I and II. The reconceptualisation of state and civil society through the category political administration has its roots in the work of Hegel and Marx. Chapter One explores the state-civil society distinction as it operates in the work of these two thinkers,

drawing out the key theoretical insights they make. In Chapter Two we explore the attempts by some Marxists to develop further the analysis of the state. These are shown to be highly problematic, partly because of the absence of the state-civil society distinction in favour of a crudely economistic base-superstructure model or, in the case of Gramsci, a failure to develop the state-civil society distinction from within the base-superstructure model.

Part II is given over to an immanent critique of the work of Michel Foucault, who has thrown down perhaps the most serious theoretical challenge to the Marxist analysis of the state. The necessity of retaining the state-civil society distinction will be drawn out via a critique of the work of Foucault and those who seek to utilise the categories he develops. Foucault's work fails to acknowledge the constitutive power of the state. Yet its sensitivity to both the kind of historical changes we are concerned with and the consequent necessity of developing a more adequate account of power, leads him to some key insights. His focus on the *administrative* mechanisms through which power operates contributes greatly to our understanding but, because it operates without any account of its role vis a vis the state and civil society, has severe limitations. It needs to be *politicised*, in the strict sense, and hence turned into an account of *political administration*.

Notes to Introduction

1. The exchange between Poulantzas and Miliband can be found in Ideology in Social Science, edited by R. Blackburn (London, Fontana, 1972). For the state-derivation debate see State and Capital: A Marxist Debate, edited by J. Holloway & S. Picciotto (London, Edward Arnold, 1978). On crisis see J. Habermas Legitimation Crisis (Cambridge, Polity, 1988), C. Offe Contradictions of the Welfare State (Cambridge Massachusetts, MIT Press, 1984) and J. O'Connor The Meaning of Crisis: A Theoretical Introduction (Oxford, Blackwell, 1987). For the view from the libertarian right see R. Nozick Anarchy, State and Utopia (Oxford, Blackwell, 1974), and on the 'New Right' generally see A. Gamble The Free Economy and the Strong State (London, Macmillan, 1988).
2. D. Easton, 'The Political System Besieged by the State' Political Theory Vol.9 No.3 (1981). See also his The Political System (New York, Alfred Knopf, 1953). For a critique see J. Hoffman, State, Power and Democracy (Sussex, Wheatsheaf, 1988), ch.1.
3. For example, B. Frankel, Beyond the State? Dominant Theories and Socialist Strategies (London, Macmillan, 1983).
4. On Poland in particular see A. Arato, 'Civil Society Against the State: Poland 1980-81' Telos 47 (Spring 1981) and 'Empire vs. Civil Society: Poland 1981-82' Telos 50 (Winter 1981-82). On civil society generally see N. Bobbio, Democracy and Dictatorship (Cambridge, Polity Press, 1989); J. Cohen & A. Arato, Civil Society and Political Theory (Massachusetts, MIT Press, 1991); R. Harris, 'Socialism and Democracy: Beyond State and Civil Society', Radical Philosophy 45 (Spring 1987); A. Honneth, 'Conceptions of "Civil Society"', Radical Philosophy 64 (Summer 1993); J. Keane, Democracy and Civil Society (London, Verso, 1988) and J. Keane, (ed.) Civil Society and the State (London, Verso, 1988); K. Kumar, 'Civil Society: An Inquiry into the Usefulness of an Historical Term', British Journal of Sociology 44/3 (Sept. 1993) and the response by C. Bryant in the same issue; E. Meiksins Wood, 'The Uses and Abuses of "Civil Society"', The Socialist Register (1990); K. Tester, Civil Society (London, Routledge, 1992).
5. N. Poulantzas, State, Power, Socialism (London, Verso, 1978), Introduction.
6. N. Bobbio, 'Is there a Marxist Doctrine of the State?' in his Which Socialism? Marxism, Socialism and Democracy p.51.
7. B. Jessop, State Theory: Putting Capitalist States in Their Place (Cambridge, Polity, 1990), p.249.
8. The question asked, but not answered, by Bobbio op.cit. See the same volume for a reply to Bobbio by Tony Negri.

9. If the argument is successful then it is possible that it can be used for analyses of other states, but that question is beyond the scope of this thesis; I therefore make no attempt at a comparison with other states. Likewise the focus on the English working class omits any discussion of the colonial situation in this period, and especially the question of the Irish working class.

Part I: State

Introduction

Much has been made of the variety of approaches to the state in Marx's work, with commentators isolating three or more theoretical approaches. These are said to include an instrumentalist approach in which the state is seen as a committee for the management of the affairs of the bourgeoisie; an approach in which the state is seen as an arbiter or a major factor in social cohesion; and an approach which considers the state as part of the superstructure, thereby utilising the base-superstructure model.¹

It is not my intention to choose between one or more of these approaches, nor am I concerned with isolating and discussing them individually. Rather I am concerned here with developing the theoretical premises for the argument in the rest of this thesis. It will be argued that the work of both Hegel and Marx provides key insights into the nature and functioning of state power. An immanent critique of this work will provide the starting point for the development of the theoretical categories with which to comprehend political administration in its relationship with state and civil society, categories that need to be developed in the light of both historical change and subsequent political theory. It will be argued that despite Marx's substantial critique of Hegel one of his approaches to the state is heavily indebted to Hegel, not just in its dialectical method but in the very content of its analysis of the state and society. This will be welcomed as a positive dimension of Marx's work, not in order to signal some kind of shift back to Hegel in preference to Marx, but in order to move, via an immanent critique of the work of both writers, towards a more adequate conceptualisation of state power in its relation to civil society. More specifically, it will be argued that although Marx's development of historical materialism would appear to signal a major theoretical shift away from the idealism that characterises Hegel's work, the more suggestive dimensions of his work on the state concern the way that the state can act not merely as an arbiter or factor of cohesion, but as a major constitutive power over civil society. Moreover, much of this constitutive power will be argued to be necessary given society's rootedness in struggle. It is these two moments in Marx's work that will be shown to be heavily dependent on the Hegelian heritage. Lest this be read as reducing Marx to Hegel, it will also be shown that Marx makes significant

theoretical advances beyond Hegel, both in his understanding of the institutions of state power and of the nature of the relationship between state power and class struggle.² Thus rather than fleeing from Hegel only to find him waiting there for us at the end³ this study starts in the way he himself would probably prefer - with an immanent critique.

The purpose of these discussions is thus not to engage in yet another historical-theoretical exegesis of the Marx-Hegel relationship, interesting though that relationship may be, but to provide the theoretical groundwork for the arguments contained in the rest of this thesis, which will consider the manner in which the capitalist state seeks to administer social struggle and the theoretical problems this poses.

The fruitfulness of an immanent critique of Hegel and Marx is brought out in the discussion of key writers in the 'classical' Marxist tradition, in Chapter Two. There the work of Gramsci will be shown to be far richer in its analysis of state power in relation to civil society because, despite its faults, its adoption of key Hegelian-Marxist categories and an expanded state concept prove far more useful than the work of either the Second International or Althusser. Lenin was unable to conceptualise the incorporation of the working class into civil society, despite the fact that this process was almost fully achieved in Western capitalist states by 1918. Part of this failing rests on the dependence of his analysis on the external relations of the state (imperialism) rather than 'internal' administrative processes. Conversely, Althusser's analysis, whilst allowing for the incorporation of the working class, conceptualises this through a range of 'ideological' institutions coterminous with the social body. This serves to dissolve the specificity of the political, thereby losing the possibility of developing real materialist analyses of state power. It is in contrast to these that the strength of Gramsci's adoption of a combination of Hegel's as well as Marx's insights can be illustrated. However, whilst Gramsci is right to retain and rethink the state-civil society couplet, by separating this from the base-superstructure couplet (a separation consolidated by his assertion of the Hegelian heritage of the former and the Marxian heritage of the latter) Gramsci is then forced to draw them together again 'artificially', resulting in a highly problematic transformation.

Chapter One

State Power, Social Power

State and Civil Society in Hegel and Marx

For both Hegel and Marx the distinctive political feature of modernity is the duality of state and civil society. Both recognise it as the manner in which modern society is differentiated from feudalism. Whereas in feudalism social relations were both economic and political at one and the same moment, indeed the ‘economic’ and the ‘political’ were so fused that it is mistaken to distinguish them in this way, Hegel and Marx recognise ‘modern’ society as one of separation, whereby political relations take the form of and are exercised through a separate state authority. Economic relations are seemingly devoid of political content.

Prior to Hegel political thought worked not with a distinction between ‘state’ and ‘civil society’, but with one between ‘state and civil society’ on the one hand and the ‘state of nature’ on the other. The terms ‘civil society’ and ‘state’ were coterminous, a meaning that was captured by the phrase *societas civilis*. In practice this meant that to be a member of civil society was to be a member of the state - a citizen.¹ A distinction between the two only began to emerge about 1750, with works such as Adam Ferguson’s An Essay on the History of Civil Society (1767). The distinction is central to Hegel’s work, although the two concepts are ultimately reintegrated in the totality. For Hegel the necessity for the distinction appears to have a number of origins and dimensions: the French Revolution, the industrial revolution in England, and the recognition of the existence of a sphere of social conflict. These shall each be dealt with briefly in turn.

For Hegel the French revolution posed the problem of the age: the political realisation of freedom, in particular vis a vis the old ruling institutions. The demand for freedom is a demand for a legal and political form in which this freedom can be realised. As such the French Revolution was an event of world-historical import, to which French philosophy adheres by asserting the universal principle of freedom.² The essence of the French revolution was that, despite its explicitly

political nature and its concern for the transformation of economic relations, it contained a *social* dimension. In his earlier Jena period (1805-6) Hegel is sensitive to this dimension but lacks the conceptual tools to address it adequately. By the Philosophy of Right (1821) however, he has developed the category of civil society.

It was partly in seeking a conceptual framework to incorporate the ideas of freedom and a social realm thrown up by the French Revolution that Hegel turned to the question as it was posed in England, focusing in particular on the changes being wrought by the industrial revolution in particular. It became clear that this distinctly modern mode of production produces extremes of poverty and wealth, and a class which because of its poverty relies only on its labour. At the same time Hegel worked through English political economy and its attempt to comprehend this situation. This alerted him to two major features which he incorporates into his thought as central categories, which Marx later adopts and radicalises: needs and labour. The network of social relations that Hegel would call 'civil society' appears to him to be based on the system of needs rather than the contract. Needs are posited as the basis for social engagement of otherwise private persons. Likewise Hegel develops the concept of labour, not only as a category of political economy, but also as the basis for humanity's liberation from nature.³

Finally, Hegel is aware that the coming together of private individuals, in a sphere that is neither family nor state, will involve a clash of wills, antagonism and tensions. Relations in civil society are conceptualised as imbued with conflict, a conflict which will require the regulation by public authority.

Hegel is thus faced with a major conceptual problem: how to think the world historical importance of the realisation of freedom in the French Revolution, the growth of industrial society, the dialectic of labour and needs, and all this in a sphere rooted in conflict. In other words, there exists a sphere of 'social' relations which cannot be subsumed into the sphere of 'family' or 'state' and which, furthermore, neither traditional political theory nor natural law theory can fully account for. By the time of the Philosophy of Right Hegel has made the crucial theoretical shift by positing a third dimension, 'civil society' standing between the

family and state.⁴ As such Hegel recognises civil society as the hallmark of the modern world.

By using the phrase *bürgerliche Gesellschaft*, which in German means both *civil* and *bourgeois* society, Hegel captures the two distinctive features of this new sphere of social relations. First, that they are socio-economic as opposed to political relations. That is, the political moment has been abstracted into another sphere. Second, this new sphere of civil society is essentially bourgeois - it is a sphere of atomised self-seeking individuals. It is through this conceptual distinction that Hegel wrestles with their real separation as an historical moment and seeks to supersede it. It is precisely this problematic that Marx inherits from Hegel.

Marx accepts Hegel's argument concerning the essentially modern aspect of the emergence of civil society, along with its bourgeois nature. He writes that

The constitution of the political state and the dissolution of civil society into independent individuals - who are related by law just as men in the estates and guilds were related by privilege - are achieved in one and the same act.⁵

This for Marx is a process of abstraction, and is the defining political characteristic of modern society:

The abstraction of the state as such was not born until the modern world because the abstraction of private life was not born until modern times. The abstraction of the political state is a modern product.⁶

Hegel and Marx agree that the separation of state and society, the political and the socio-economic, removes the political element from man's life; man becomes split into two, his fundamental being becomes alienated. At the same time within civil society man is separated from man as an isolated individual. Finally, this sphere produces extremes of poverty and wealth that threaten to destroy it. For these reasons both Hegel and Marx consider the separation of state and civil society as something to be superseded, overcome in a higher order. But they disagree as to the form that this supersession can take.

For Hegel state and civil society are structurally integrated with each other in a series of interlocking mechanisms. Thus civil society consists of the system of needs, police, and law and administration, whilst the 'strictly political state'

likewise has three dimensions: the crown, the executive, and the Estate Assembly or representative body. The phrase ‘political state’⁷ alerts us to the fact that Hegel is working with two conceptions of the state: the ‘strictly political state’ containing the range of institutions and moments, and the state properly so called. This latter concept is the ‘actuality of the Ethical idea’, ‘the actualization of freedom’, ‘the march of God in the world’, and it is with this latter concept, the state proper, that Hegel is referring to the totality of human life within a community united by tradition, religion and morality, which thus forms an ethical community. The moments, or spheres of ‘ethical life’, of this universal state proper are the family, civil society and the political state. For Hegel the family is the first ethical root of the state, whilst the corporation, based in civil society, is the second.⁸ Civil society is a form or aspect of the state: ‘one may regard this system in the first instance as the *external state*, the *state of necessity*, and *of the understanding*’.⁹ The final moment of the state as an ethical community is the ‘political state’. Aside from the fact that, as commentators have noted, this dual concept of the state has been the source of much confusion as far as Hegel’s commentators and critics are concerned, it has also been the source of some misunderstanding when considering the work of those who have sought to utilise a Hegelian conception of the state, albeit one that has been radically rethought. I am thinking here of Antonio Gramsci, whose Hegelian-Marxist conceptualisation of state and civil society is considered below (Chapter Two).

Whilst state and civil society are held apart conceptually they are simultaneously pulled together through a dual mechanism, each element of which operates in the opposite direction to the other: the police and corporations represent the penetration of the state into civil society, whilst the Estate assembly represents the penetration of civil society into the state. This interpenetration of state and civil society follows from Hegel’s understanding that the system of needs does not and cannot exist in a vacuum free from any ‘interference’ by public authority. Whilst accepting many of Adam Smith’s insights he accepts the principle of a hidden hand only in an oblique fashion.¹⁰ This is because for Hegel the system of needs must be politically ordered and publicly regulated. Even if it were the case that the collision of producers and consumers could re-establish itself automatically, ‘its adjustment

needs to be consciously regulated by an agency which stands above both sides'.¹¹ It is to this end that the police exists. For Hegel 'police' refers not to a national body charged with the task of enforcing the law, but to a whole range of institutions mediating between the individual and the universal. Thus 'the police should provide for street-lighting, bridge-building, the pricing of daily necessities, and public health', they should engage in the provision of education, welfare, the founding of colonies.¹²

Just as the police is intended to overcome the problems integral to a market system, so the corporation is intended to overcome the problems integral to moving beyond the family and becoming a member of civil society. Through membership of a social estate we assume a particular social standing. We are no longer individualised atoms seeking economic self-interest but contribute to the welfare of others. In this sense the corporation assumes the role of a second family for its members.¹³ The organisation of trades and professions, estates, are corporations in civil society. Hegel considers there to be three corporations corresponding to the three estates: the agricultural, the business and the universal (the bureaucracy). Such corporations provide members with a collective identity and purpose and resist the danger of an unorganised crowd coming into existence. For reasons that will become clear below it is important not to regard these as classes. What is significant about the estate-corporation continuum is that though they be 'of' civil society *estates are constituted as corporations by the state*. 'It is only through legal recognition that a community becomes a corporation' and 'a community can exist in civil society only if it is legally constituted and recognised'.¹⁴ Given that the state is the law¹⁵ Hegel is here registering the constitutive power of the state over civil society. The state does not simply regulate civil society, *it actively shapes it according to necessary ends*.

It is theoretically significant that Hegel places the police and corporation in civil society. For both have the universal as their end. 'What the police provides for...is the actualisation and preservation of the universal which is contained within the particularity of civil society', and 'the end of the corporation...has its truth in the *end which is universal* in and for itself and in the absolute actuality of this end.'¹⁶ With the police and corporation assuming such ends the sphere of civil society

passes over into the political state; they represent the political inside civil society.¹⁷

Yet in similar fashion civil society also penetrates into the state. This is achieved through the Estates Assembly. The estates of civil society are equipped for their political role by virtue of being independent of the resources of the state and the favour of the executive, free from the uncertainty of trade, protected from the masses. By assuming a position in the state through the election of deputies to an Estates Assembly 'the *private estate* attains a *political significance* and function'¹⁸ It is a function of utmost importance since it is to act as a mediating organ between the government on the one hand and the people on the other.

This position means that they [the Estates] share the mediating function of the organised power of the executive, ensuring on the one hand that the power of the sovereign does not appear as an isolated *extreme*...and on the other, that the particular interests of communities, corporations and individuals do not become isolated either.¹⁹

Just as the police and corporations represent the penetration of the state into civil society and operate as a mediating organ, so the Estate Assembly represents the penetration of civil society into the state, ('the proper significance of the Estates is that it is through them that...the people begins to participate in the state'²⁰). It likewise operates as a mediating organ.

Marx's comment that this is the 'solution to the puzzle' provides the key to his critique of Hegel. The 'solution' is that the Estates are supposed to regain the unity of political and civil life lost in the separation of state and civil society. For the Estates represent the particular interests of groups, not individuals. It is groups that enter into and liaise with the state, and it is therefore groups that achieve political significance. It is because of this that Hegel comments that the German language, by giving both the classes of civil society and the Estates the same name, *Stände*, maintains the unity which they previously possessed. However, Marx points out that Hegel has forgotten his own observations on the separations of modern society. The classes of the middle-ages were not originally civil and then became political; they were civil and political at precisely the same time. The political significance of these classes was not acquired, but was inherent in their very existence. Yet for

Hegel the Estates represent the unity of political and civil life, despite the fact that he himself had shown the separation of civil and political life.

Marx regards Hegel's 'solution' as the theoretical synthesis of a very real problem, because 'the Estates are the incarnation of the *contradiction* between the state and civil society within the state. At the same time they symbolise the demand that this contradiction be *resolved*'.²¹ In other words, the resolution of the separation between the state and civil society is not achieved through a mediating institution. A mediating institution can only mediate, it cannot *resolve*.

The...truth is that Hegel experiences the separation of the state from civil society as a *contradiction*. The mistake he makes is to rest content with the semblance of a resolution which he declares to be the real thing. By contrast he treats with contempt the '*so-called theories*' which call for the '*separation*' of the classes and Estates. These theories, however, are right in that they express a *consequence* of modern society for here the Estates are nothing more than the factual expression of the real relationship between the state and civil society, namely one of *separation*.²²

The Estates are the theoretical mystification of a real process. They give the illusion of unity but do not, and cannot, achieve it in reality. They represent the romanticism of the political state and of political theory, for they present the image of unity and harmony.

Thus whilst Hegel's conceptualisation operates with the two categories, state and civil society, he seeks to mediate their opposition through a complex series of organs and mechanisms which mask the fact that it is the state that has ultimate authority. The possession by the state of constitutive power over civil society is not only a means of mediating the separation of civil society and the state. It is also Hegel's *political* solution to the contradictions of civil society. Political struggle takes place within the state. The state, as the place of political activity and of reason, is the place where the resolution of struggle and crises occurs. The police and corporations of civil society pass over into the policing and the corporate organisation of civil society by the state. The organisation of the state administration, the civil service, illustrates this most clearly. Hegel regards the civil service as a fundamental feature of a modern state. As the educated elite it is able to grasp the essentials of ethical life and, as professional civil servants, its members

are free from having to provide for themselves and their family. Firmly positioned within the state as part of the executive, the civil service concerns itself with the transition from the universal to the particular and individual. This means not merely respecting the legitimate interests it finds in civil society, their mere supervision; it means actually organising and governing civil society.²³

This recognition represents one of Hegel's major insights: that in the modern duality of state and civil society the existence of administrative mechanisms is fundamental, for the state must not only establish laws which are universal in content applying across the face of civil society, it must also implement these laws and administer the particular. Thus law and administration, whilst separable in principle, are structured into one another. Through them the state constitutes a range of administrative mechanisms through which it regulates civil society.

Now, although Marx regards this as accommodation on Hegel's part and is therefore deeply critical of it, and despite the fact that in his development of historical materialism he will assert the struggles within civil society as the driving force of history, Marx at times makes use of Hegel's insight into the nature of state power. In his analysis of the French state at a particular historical moment, for example, Marx marvels at its power:

In France the executive has at its disposal an army of more than half a million individual officials and it therefore constantly maintains an immense mass of interests and livelihoods in a state of the most unconditional dependence; the state enmeshes, controls, regulates, supervises and regiments civil society from the most all-embracing expressions of its life down to its most insignificant motions, from its most general modes of existence down to the private life of individuals. This parasitic body acquires, through the most extraordinary centralisation, an omnipresence, an omniscience, an elasticity and an accelerated rapidity of movement which find their only appropriate complement in the real social body's helpless irresolution and its lack of a consistent formation.²⁴

Here the state is supremely powerful - omnipresent and omniscient - using its presence and knowledge to regulate and regiment civil society. Elsewhere Marx comments that one outcome of the French revolution was a state which encoils and enmeshes civil society like a boa constrictor: 'every minor solitary interest engendered by the relations of social groups was separated from society itself, fixed

and made independent of it and opposed to it in the form of state interest, administered by state priests with exactly determined hierarchical functions'.²⁵

The state maintains itself because it has the capacity to separate social interests, formalise them into concerns of the state, and administer them bureaucratically, thereby negating their social force. In other words, *in the very process of organising civil society and the working class, it simultaneously disorganises them and subsumes social force and struggle into an administrative form*. The indebtedness to Hegel is apparent. As Riedel notes, Hegel recognises that society would not be 'civil' if it were not ordered and administered politically.²⁶ We can add that, given society is as much 'bourgeois' as it is 'civil' (*bürgerliche Gesellschaft*) so society would not be *bourgeois* unless it were ordered and administered politically. We shall return to this below.

Now, Hegel regards the civil service as an estate of civil society; he deals with it in both the sections on the state and the section on the system of needs in civil society.²⁷ However, there is an important respect in which the universal estate differs from the others, for it is an estate that is constituted *entirely* by the state. Despite Hegel's hints that due to the necessity of education and legal training the members of the executive and civil service constitute the bulk of the middle class [*des Mittelstandes*], the double meaning of *Stand* does not apply here.²⁸ It is not simply that anyone can be a candidate for public office, as Hegel himself notes.²⁹ It is that there is no estate of civil society that presents itself for legal constitution and recognition as the bureaucracy. As such the state must constitute the administrative organ that is the civil service from scratch, as it were. In his desire to argue for a complementarity between estates and Estates Hegel misses this point, and in the process misses one of the central features of the power of the state. Likewise Marx, in his discussion of the Estate of civil servants, also misses this.³⁰ Moreover, though he regards the bureaucracy as an Estate within the state Hegel positions it in the executive rather than the Estate Assembly. Thus in the very act of its constitution the bureaucracy is distinguished from other groups that operate within the state. Administration assumes a role inherently different from any other section of the state, precariously straddling the boundaries of state and civil society

whilst simultaneously performing the same role with the boundaries of legislature and judiciary.

Let us consider why there is the need for mediation. For Marx the necessity for state authority lies in the fact that civil society is persistently on the verge of being torn apart by *class* antagonism. Hegel's work on the state is notable for its absence of anything approaching a class analysis. Despite the fact that for Hegel civil society contains opposite extremes of extravagance and poverty, and that there is the possibility of a large number of people falling below a certain standard of living, losing any feeling of right, integrity and honour and becoming a rabble, he considers that there is no way for this situation to be superseded. It is a problem which can not be overcome. This will provide the basis of Marx's argument that Hegel's philosophy of right is merely an attempt to mediate the contradictions of civil society rather than overcome them. For our part here we need to register the significance of this aspect of Hegel's work for, along with Marx's critique, it prefigures arguments developed in later chapters.

Two features stand out in Hegel's three-fold division of the estates of civil society. First, there is no space within this distinction for the working class (let us say, an estate of wage labourers). Second, Hegel does not use the category 'class' for the estates, but reserves it precisely for those engaged in wage labour. He suggests that the sphere of needs and the manner of production in civil society gives rise to the division of labour, and this gives rise to a class which is tied to such work.³¹ As Avineri notes, it is only in referring to workers that Hegel uses the term *Klasse* rather than *Stand* which he uses when otherwise discussing 'social classes'.³² Given that for Hegel the estates are precisely the socio-economic classes of civil society this must mean that *the working class is not of civil society*.

Since each of the estates is a different sphere of need, not being an estate must mean that the working class is outside the recognised sphere of needs. But not being a member of an estate means that that person is nothing, nobody:

When we say that a human being must be somebody we mean that he must belong to a particular estate; for being somebody means that he has substantial being. A human being with no estate is merely a private person and does not possess actual universality.³³

Not having an estate thus excludes an individual from society; not being an estate excludes the working class from civil society. As such it is excluded from participation in ethical life. And it is only by being a member of civil society that an individual has rights and claims in relation to it.³⁴

Thus although Hegel posits the necessity for mediation of social conflict and contradictions of wealth and poverty, and he is aware of the centrality of the working class to this - for the working class is a product of civil society - Hegel does not theorise this in relation to his model of conflict. Despite the fact that the working class is a product of civil society, and is most endangered by its workings and poses its greatest threat, there is no space in Hegel's theoretical schema for this class. Or rather, the only theoretical space which it is allowed is as a threat to social stability. As Cohen and Arato comment, being incapable of intraclass integration, workers in Hegel's view do not seem capable of interclass conflict.³⁵

Moreover, poverty as it manifests itself as class division is the one problem of civil society that cannot be resolved through Hegel's series of mediations. For poverty is a general consequence of civil society and on the whole it arises *necessarily* out of it. Public authority may alleviate the problem, but cannot overcome it. Hegel can only note despairingly that 'the important question of how poverty can be remedied is one which agitates and torments modern societies'.³⁶ But this is also a problem of the class that is in poverty. Hegel lacks any solution to the problem because his concept of class is theoretically distinct from his concept of *Stände*. In other words, although Hegel works with a set of social divisions of civil society, his own analysis reveals an even more basic set of social divisions, rooted in the concept of need. Yet he cannot integrate this into his theory. He is unable to address the problem of class within this theory.³⁷

In fact, Hegel misses the opportunity, provided by his own conceptualisation of power, classes and the state, to theoretically incorporate the working class and therefore provide the solution to the problem of poverty as it presents itself in his work. For as we have already seen, the communities which form estates can only exist in civil society if they are legally constituted and recognised, and yet only those communities that are already organised can be legally constituted and recognised. Given the supposed disorganisation of the working class it is consistent

for Hegel to exclude them from social and political life. However, one possibility, that would have gone some way to solving the problem of poverty as it appears in his work, *is for the working class to be organised, legally constituted and recognised through the activities of the state and the mediating organs*. Whilst Hegel may not have wished to recommend such an act for political reasons, it is his failure to envision the possibility of the constitution of workers as individual citizens and members of a class of civil society that illustrates the limits of his work. Nonetheless he provides the key categories with which to make such a conceptualisation, and these will be developed in later chapters.

Now, despite his trenchant critique of Hegel, and the centrality of a universal class with radical chains to this critique, Marx makes the same mistake, for he uncritically inherits from Hegel the belief that the working class is a class in but not ‘of’ civil society. In his ‘Introduction’ to his critique of Hegel’s philosophy of right he makes this explicit: ‘Where is the *positive* possibility of...emancipation? *This is our answer*. In the formation of a class with *radical chains*, a class of civil society which is not a class of civil society’. And in The German Ideology he writes of the class that bears the burdens of society and none of its advantages, and which consequently is ‘ousted from society’.³⁸ Despite his distance from Hegel Marx accepts the existence of a class outside of society. Following Hegel, he fails to envision the inclusion of the working class as a class of civil society and the state. Both writers fail to do so despite their recognition of the necessity for state regulation and the constitutive power of the state over civil society.³⁹

This failure is partly a product of historical circumstance. At this period in history the European working class stood in a contradictory position to both civil society and the state. It was half outside and half inside both society and the state; in its struggle to become fully social it stood with one foot inside the state.⁴⁰ This manifests itself as a tension throughout Marx’s work concerning the historical possibility of working class recognition. For example, the class struggles in France of 1848 to 1850 are significant because although the working class failed to triumph despite being a decisive mass force in the political sphere, it achieved *recognition* as a political force. Marx notes that ‘What it [the proletariat] conquered was the ground on which to struggle for its revolutionary emancipation, by no

means this emancipation itself'.⁴¹ Likewise, in discussing 'The Chartists' (1852) Marx regards the initial show of hands by both electors and non-electors as only partial recognition, acceptable only if a 'satisfactory' conclusion is reached (the 'right' candidates being elected). The show of hands is a concession to the people, to popular participation, but is overridden as soon as it threatens the system. 'The election by show of hands was a mere ceremony, an act of formal politeness towards the 'sovereign people' and the politeness ceases as soon as the privilege is menaced'.⁴²

The point is that the working class suffered an ambiguous existence at this moment, being both recognised and yet not recognised, in but not of civil society. In the process of struggle and declaring itself as a class force it could gain recognition from precisely those forces already of civil society but its standing was so weak that it could find itself, when it seriously threatened political order, on the receiving end of organised political violence and thereby defeated in its struggle. Thus was the delicate relationship between the working class and the state. Its recognition was a facade; it was recognised only as long as it did not assert itself too vehemently; if it did this and was experienced as a threat by the bourgeois class and the state, it was 'unrecognised'.

Moreover, in the very process of granting recognition the state was able to restructure itself and civil society accordingly. Class struggle leads to its mediation through state action. For example, the demand for the organisation of labour by 20,000 workers outside the Hotel de Ville results in the development of a permanent special commission to investigate the situation of the working class - the demands of the working class creates a Ministry of Labour alongside all the other state ministries.⁴³ The demands of the mass force of the working class are thus transformed into a government commission, a department of state. Likewise the outcomes of the struggle over the length of the working day is the official recognition of class power and a host of formal regulations to deal with it.⁴⁴ Working class demands become formalised within the bourgeois political system. Consequently key political developments can be read not as the overthrow of the bourgeois social order but rather its '*political reconstitution, the political reconsolidation of bourgeois society*'.⁴⁵

From Civil Society to the Social

There are some fundamental structural affinities between Marx and Hegel's views on state, civil society and the working class, and some similar conceptual omissions, but it needs to be stressed that Marx thoroughly radicalises the model that he inherits from Hegel. There is a more subtle and nuanced relationship between the two writers than is suggested by the dismissal of Hegel as the philosopher whom Marx stood on his head. Too much has been made of the aspects of Marx's early critique of Hegel that are in fact essentially Feuerbachian. (I am referring to Marx's discussion of Hegel's inversion of subject and predicate). Obviously this element of Marx's critique cannot be ignored, and more than anything it stresses the philosophical and political context in which he was writing. But reading Marx's critique of Hegel through this debate alone would *reduce* him to Feuerbach, and that is something to be avoided. For the Feuerbachian aspects of Marx's critique are in fact the least significant or interesting ones today. It will be argued here that Marx moves beyond Feuerbach as he moves beyond Hegel, and he does so by developing the category of the social.⁴⁶

Marx believes that his solution to the problem of state and civil society is equally the solution to the problem of poverty. This registers a shift in Marx's focus from the separation of state and civil society to the analysis of that civil society; since civil society constitutes the base of all social and political relations it is to this that Marx is forced to turn. One feature of this task is that Marx adopts and radicalizes the categories labour and alienation.⁴⁷

It has been noted that for Hegel poverty is a general consequence of civil society and arises out of it of necessity. Marx accepts this conceptualisation of poverty as it is linked with civil society,⁴⁸ but at the same time seeks to overcome it through an immanent critique of civil society and political economy. Political economy as it operates within bourgeois thought faces the central contradiction that the class of labour is both the source of wealth and the class of poverty and alienation. Political economy overcomes this contradiction by positing the laws and categories of political economy as natural and ahistorical.⁴⁹ His critical encounter with political economy moves Marx to understand civil society through the wage labour and private property relation. The effect of this is to deepen Marx's understanding

of civil society, for the system of needs and the problematics of political life is now be read through the contradiction between wage-labour and property.⁵⁰

On the other hand, Marx's understanding of the political economy of labour is rooted in the philosophical conception of labour as he inherits it from Hegel. Marx writes that Hegel's importance is that he 'grasps the nature of *labour* and conceives objective man...as the result of his *own labour*'.⁵¹ Thus for Marx labour is a category of both philosophy and political economy. As such it is integrally related to the category of alienation. Marx distances himself from Hegel's essentially idealist concept of alienation, in which the only labour known is abstract mental labour and human nature or man is equivalent to self-consciousness, for in such a conception all estrangement is only the estrangement of self-consciousness rather than 'real' estrangement. This estrangement can then be overcome not through historical practice, but through a philosophical reinterpretation of the world.⁵²

In the process of drawing political economy and German philosophy together Marx radicalises both. The philosophical conception of labour lends weight to the importance granted to political economy of wage-labour, and, simultaneously, alienation can be used as the basis of the critique of wage-labour. For wage-labour, far from being the satisfaction of needs, becomes a fundamentally alienating and alienated activity.⁵³ The implications of this for our analysis here are enormous. As Cohen notes, the 1844 manuscripts 'mark a turning point in Marx's work not simply because they resulted from his first confrontation with political economy but, above all, because they signal a new approach to the analysis of civil society. The introduction of the dualistic concept of labour (objectifying praxis/historically specific wage labour) as the unifying and active centre of both civil society and history occasions the transformation'.⁵⁴ Moreover, the development of the category wage-labour allows Marx to deepen and strengthen his critique of the contradictions and struggles within civil society.

Two things follow which pre-empt the discussion in the sections below. First, what will be discussed below as the re-uniting of state and civil society now has a material grounding in the movements of civil society, the sphere of needs in particular. It seeks to overcome the alienation and poverty there. And this reunification, the revolutionary supersession of the existing order, must be the work

of elements of civil society, the universal class throwing off its radical chains. Second, this achievement of universal freedom can therefore not be reduced to the domain of a democratized state.⁵⁵ From this point Marx will argue that liberation within the state or through the state is not sufficient, will not be universal liberation, for political freedom is not human (social) freedom. The latter must refer to the sphere of needs and labour, whilst the former refers to formal, political, freedom.

Marx's rejection of the mediating institutions introduced by Hegel in response to the contradictions of modernity is based on his claim that Hegel's 'resolution' is in fact only the semblance of a resolution in which the contradictions are preserved in a different form rather than superseded.⁵⁶ Now, what is partly at issue here is a dispute over the concepts of 'mediation', 'overcoming', 'supersession' and 'resolution' - the core categories of dialectical logic. Hegel's dialectical category *Aufheben* (sublation) is used for its double meaning of abolish and preserve. Conscious of this, Marx notes that in spite of their 'sublation' in the Philosophy of Right family, civil society, state etc. 'continue to exist'.⁵⁷ That is, they are preserved in their abolition. Hegel and Marx's *agreement* that civil society contains contradictions and separations and that these need to be overcome and thereby solved leads to a fundamental *disagreement* as to the nature of their supersession. Yet despite Marx's focus on the centrality of the logic to Hegel's political philosophy - 'Hegel's true interest is not the philosophy of right but logic'⁵⁸ - there is a deeper political critique to be noted. For Marx, Hegel's solution represents an accommodation of the separations within modern society. Since the separations that exist are a product of the abstraction of the state and the development of private property the practical attempt to overcome them through mediation merely expresses them anew; it does not and can not truly overcome them. More significantly, it is the continuation of the contradictions and their assimilation into the state. That is, Hegel's 'resolution' of the problem is in fact a *conversion of the problem into a new form*. For, as was noted above, the outcome of Hegel's mediating institutions is that the struggles of civil society are shifted onto the state and are there administered. *The political consolidation of bourgeois*

society involves the subsumption of social struggle into political administration by the state.

In his gradual distancing from Hegel it would appear that there are three directions in which Marx is moving. First, Marx argues that many of the institutions that perform 'mediating' roles are in fact state institutions rather than those of civil society. Second, Marx posits civil society as the real driving force behind history, or the arena in which the 'real' struggles of history are played out. Third, in rejecting Hegel's 'solution' to the problems Marx seeks to recommend his own method of overcoming the separation of state and civil society. What will be argued here is that in Marx's work these three dimensions are in tension. It will be argued that historical materialism needs to retain all three, but must be aware of the tension that exists between them. Finally it will be claimed that, with regard to the first two, only by developing a more thorough category of 'political administration', produced in and through struggle, can state power be understood. For although in Marx's own work this provides the greatest source of tension it is precisely this dimension that needs developing. Later chapters will show how, in the light of historical developments, the insight that the state can subsume social struggles into the political administration, an insight found in both Hegel and Marx, needs to be developed. Rather than jettisoning Marx and Hegel as a result of the significant historical changes since their day, it is argued that their work requires a rethinking and their core categories strengthening. If this period saw the political reconsolidation of bourgeois society in the granting to the working class of the political ground on which to struggle, and the increased regulation of civil society by the state, then the conceptual dichotomy of state and civil society which was so crucial to Marx's earlier analysis may appear inadequate. If the working class is becoming assimilated into the state as it develops as a political force then clearly there are institutions which are in some way successfully mediating between the state and civil society and in doing so preventing revolutionary transformation. In the light of historical developments *either* the state-civil society dichotomy needs rejecting *or* it needs rethinking. The contention here is that it needs rethinking, and that this may be best achieved by utilising the category political administration. Later chapters will show why this is so and how it can be done. In doing so it will

also be argued that not only is the working class now *of* civil society, it is also now *of* the state. Furthermore it will also be argued that the working class was constituted as such by the state and that in the process this fundamentally altered the functioning of state power.

In a significant moment in the development of Marx's own theoretical approach to the state he notes that many of the mediating organs in Hegel's account are in fact organs of the state rather than civil society.

The 'police', the 'judiciary' and the 'administration' are not the representatives of civil society which administers its *own* universal interests in them and through them; they are the representatives of the state and their task is to administer the state against civil society.⁵⁹

This is one of Marx's most fundamental insights yet, despite its presence throughout his later writings, he does not develop it. For this insight is instantly overtaken by Marx's positing of civil society as the real driving force behind history; or rather, the struggles within civil society function as that driving force. When Marx declares that the history of all hitherto existing society is the history of class struggle it is within the sphere of civil society that these struggles take place.⁶⁰ The premises of materialist method, the socio-economic relations of civil society, provide the basis from which 'legal relations and political forms' are to be comprehended.⁶¹

Many of the commentaries on Marx's work, both Marxist and non-Marxist, consider the state-civil society model to be relegated in favour of the base-superstructure model. In part this has its roots in Marx's concerns in his later work, and his comments on this work; not least the notorious 1859 Preface where he describes his shift in concerns from civil society to the key to its anatomy, namely political economy.⁶² Much has been lost in the focus on the base-superstructure model to which Marx appears to shift. The crude economism this model has frequently been taken to consist of has acted as a straightjacket rather than an aid to Marxist political theory. This straitjacket has its roots in the 'later' Marx's focus on developing a critique of political economy rather than engaging in 'political' analysis. From the suggestion that the key to the anatomy of civil society lay in political economy it was almost predictable that the focus for

analysis would not be civil society itself, nor the relation between the state and civil society, but political economy. It is a commonplace now to say that this is why Marx never developed the analysis of the state that he always intended to. The point here though is that Marx appears to have abandoned the analysis of civil society as a whole. Alvin Gouldner describes it as becoming a residual concept once Marx began to develop the critique of political economy, the outcome of which was that any analysis of social structures had to be assimilated to the mode of production.⁶³ There is some truth in this, but rather than abandoning the analysis of civil society as Gouldner maintains, Marx actually shifts his focus in such a way that the state-civil society model appears to play a secondary role at best. Thus, in much the same way that the state remains largely untheorised in Marx's later work, so does the state-civil society relation.

The appearance that Marx has shifted his focus entirely on to political economy, and his suggestion that the key to the anatomy of civil society lies in political economy, has made it too easy for Marxists after Marx, seeking orthodoxy, to read civil society as the economic system and to focus on this. Civil society became equated with the capitalist economy rather than bourgeois society. The outcome has been the development of the base-superstructure model, within the broader theoretical structures of *diamat*, where the economic base is viewed as the determining force, the (political) superstructure as an epiphenomenon of this base. Such a conception loses the richness of the state-civil society model as Marx inherits it from Hegel. For the complexities of Hegel's own system of family, civil society and state can easily be overlooked, where Hegel's 'civil society' is read entirely in terms of the system of needs. Too much can then be made of Marx's own discovery of English political economy, and the theoretical sophistication involved in considering the policing of civil society through law and administration is lost.⁶⁴ One of the central arguments of this thesis is that whilst a Marxist critique of political economy may be *necessary* for a materialist theory of the state it is not *sufficient*.⁶⁵ It is impossible to comprehend the state without conceptualising it in relation to civil society, but this can not be done if civil society is reduced to the economic for there are centres of social action which are by no means reducible to the economic, most notably the family.⁶⁶

Marx does not dispense with the state-civil society model. It remains throughout his work, and needs to be maintained *alongside* base-superstructure. Indeed, it is through retention of the state-civil society couplet that one can avoid the over-simplified and turgid understanding of base-superstructure too common within Marxism. Hunt has traced the development of the concept of civil society in Marx's work through three stages.⁶⁷ He suggests that in the early stage it is central to his analyses. It is counterposed to the state and figures in his critiques of Hegel. In the transitional stage Marx begins to distance himself from the concept, tending to consider 'social relations' in general, but he has not developed the categories to fully reject it. In the final stage, from the late-1850s onwards the concept 'civil society' disappears from his work, at the same time as he distinguishes labour from labour-power. This final shift is captured in the 1859 Preface where he suggests that the key to the anatomy of civil society lies in political economy.

The problem with such a formulation is that there is too much continuity in Marx to sustain it fully. Hunt draws attention to the way the final draft of 'The Civil War in France' differs from the first draft because 'civil society' has been replaced by 'society'. The problem with this is two-fold. First, it suggests that Marx had not completely abandoned the use of civil society after the late-1850s. If in 1871, the year of the essay, he was still using it, albeit in a first draft, he could not have been wholly against its use. Second, the replacing of 'civil society' with 'society' removes only the 'civil'. Retaining 'society' retains the substantive point: the distinction between state and its other.⁶⁸ That is, such changes are part of the tension surrounding the state-civil society model in Marx's work rather than a rejection of it.

Likewise there is a problem over the use of 'bourgeois society' in translations of texts such as Capital. Hunt draws attention to the way in which one translation *bürgerliche Gesellschaft* is translated as 'civil society' whereas in another it is translated as 'bourgeois society'. The same is true of the Grundrisse. Moreover there are slippages from one translation to another in the same text.⁶⁹ But if this is a problem, then it is one of translation alone. Marx is using *bürgerliche Gesellschaft*, for the same reason as Hegel - because it means *both* bourgeois

society *and* civil society. In the 'later' works, where Marx is discussing 'bourgeois society' he equally means 'civil society'. If one translates *bürgerliche Gesellschaft* as civil society rather than bourgeois society, as some commentators have suggested, then the later works are replete with the concept.⁷⁰

Finally Marx's occasional use of quotation marks around 'civil society', such as found on the first page of the 1857 Grundrisse, are in danger of overinterpretation. As has just been mentioned, the term 'civil society' on the first page of the Grundrisse is in some translations rendered 'bourgeois society', still inside quotation marks.⁷¹ These are intended to alert us to the problematic nature of the use of this concept. As Hunt himself suggests, this indicates a transition from a rather uncritical use to a critical use in which its limitations are recognised.⁷² It also suggest that Marx has not dispensed with the concept.

The focus on base and superstructure also shifts attention away from another of Marx's categories: the 'social'. It was noted above that Marx dismisses Hegel's proposed solution to the separation of state and civil society. Since mediating institutions can only mediate the separation, the real solution must be to close it off completely, and it is this that Marx intends by using the category of the social.

With the distinction between state and civil society the possibility emerges of the development of disciplines in which 'political' and 'social' relations are studied separately. The 'political' and the 'social' become objects of enquiry in their own right. Sociology and political science develop as independent disciplines; the sphere of the social becomes the concern of sociology. As Goran Therborn writes: 'the rise of Sociology was a crucial part of the increasing prominence and the intellectual discovery of *bürgerliche Gesellschaft* - in the sense of both bourgeois and civil society'.⁷³ The problem then becomes how these two arenas of the political and the social relate to each other; do social science and political science have any integral relationship?⁷⁴ At the same time the economic sphere becomes isolated as a third element. The state-civil society distinction is transformed into the problem of spheres, and of how these spheres interact, if at all.⁷⁵

Now, in Marx's work the sphere of the social is clearly fundamental. But it is fundamental not only because he inherits it from Hegel via the concept of civil society (and, it should be said, Saint-Simon), but because he uses the concept of

the social, (man as a social animal), to make some of the fundamental breaks that he is renowned for. Thus for example, Marx overcomes philosophical idealism not by a polemical shift to philosophical materialism, but through a focus on the social nature of human existence. Rather than replace idealism with materialism in a Feuerbachian manner,⁷⁶ he criticises both idealism and materialism by developing the concept of 'human sensuous activity, practice, human society or socialised humanity'. Likewise he overcomes the dichotomy of humanity and nature through the same conceptual move: 'The *human* essence of nature exists only for *social* man; for only here does nature exist for him as a *bond* with other *men* ... Society is therefore the perfected unity in essence of man with nature'.⁷⁷

This concept of the social also distinguishes Marx from the discipline of sociology. For although sociology utilises the concept of the 'social' the role it plays there is very different. Weber is right to point out that 'the social', used interchangeably with 'society', is construed so widely that it is taken to include the whole of reality, masking the complexity of cultural, economic and political action.⁷⁸ This can be clearly seen in the work of sociologists where 'the social', like 'society', is used as a category against which something else can be played off.⁷⁹ However, Marxism has specific concepts with which to grasp given elements of society - state and civil society to name but two.⁸⁰ More importantly, in Marx's work the social is used as the fundamental category in his critique of bourgeois society. In this sense 'the social' as it functions in Marx's work operates not as a descriptive category but as a fundamentally critical one, pointing as it does to the alienated nature of human relations within bourgeois society, and positing a collective human subject to overcome them. Thus Weber's criticism is of sociology rather than Marxism. Despite the apparent similarities and overlap of categories, sociology and Marxism remain separate, Marxism distinguishing itself from much contemporary social and political thought by utilising the social as a central category of critique that is absent from its usage in sociology.⁸¹ This will also be a fundamental difference between Marx and Foucault for, as will be argued in Chapter Three, Foucault's rejection of the state-civil society distinction replicates the difficulties found in the discipline of sociology, leaving him as it does with no concepts other than 'the social' (alongside administration) with which to consider

the development of ‘modern power’.⁸² Moreover, this raises the issue of a unified science of man from a new angle, in which ‘politics’ and ‘sociology’ would be not so much disciplines but moments in an analysis of the social totality,⁸³ the very totalising project absent in much sociology and the work of Foucault and his followers.

These differences between Marx on the one hand and philosophical materialism, sociology and Foucault on the other indicate the significance of Marx’s conceptual move. This is illustrated in the rest of his work. For example, in his critique of ‘political emancipation’ in ‘On the Jewish Question’ Marx argues that emancipation gained by specific groups through the state is political emancipation; political emancipation is not human emancipation; total human emancipation cannot be gained through the state, but requires the transcendence of the separation between private man in civil society and political life into a new ‘social’ totality.

Only when man has recognised and organised his ‘*forces propres*’ [his own force] as *social forces* so that social force is no longer separated from him in the form of *political force*, only then will human emancipation be completed.⁸⁴

And Marx champions the Paris Commune precisely for giving the life back to society as opposed to the state:

While the merely repressive organs of the old governmental power were to be amputated, its legitimate functions were to be wrested from an authority usurping pre-eminence over society itself, and restored to the responsible agents of society.⁸⁵

For Marx the Paris Commune broke the power of the state, showing not only that ‘the working class cannot simply lay hold of the state machinery and yield it for its own purposes’,⁸⁶ but that the working class could develop its own forms of political existence that would equally be a new form of social existence. So for example, in breaking with all the crucial aspects of bourgeois state power, ‘power which claimed to be the embodiment of that unity independent of and superior to the nation itself’, and promising instead to be a ‘self-government of producers’,⁸⁷ the repressive forces were to be abolished and the normal functions of the state

were performed by members of society itself. In theoretical terms for Marxist theory this meant that the working class could and did transcend the historic abstraction of the political state. The 'reabsorption of the state power by society as its own living forces instead of as forces controlling and subduing it'⁸⁸ institutes a new form of the social.

It is within this concept of the social that the strength of Marx's critique of political economy lies. The fetishism involved in bourgeois relations, in which the social bond is exchange value and where the social character of activity 'appear[s] as something alien and objective', results in social relations assuming 'the fantastic form of a relation between things'.⁸⁹ This is juxtaposed to the vision of a future society of 'universally developed individuals, whose social relations, as their own communal [*gemeinschaftlich*] relations, are...subordinated to their own communal control'. And in *Capital* after describing the historical tendency of capitalist accumulation as leading to the transformation of capitalist private property into social property, he asks that we 'imagine, for a change, an association of free men, working with the means of production held in common, and expending their many different forms of labour-power in full self-awareness as one single social labour force'. The point of course is that communism would involve the reproduction of individuals as *social* individuals where wealth is 'the *universality* of individual needs, capacities, pleasures, productive forces'.⁹⁰ The key to understanding alienated labour then is that it is not fully social; likewise the key to understanding alienated society is that it has not been fully socialised.

Interestingly, there is a tension in Marx's work between the understanding of *bürgerliche Gesellschaft* as something to be superseded, and the recognition that civil society is the first formation which socialises economic forces, in the process producing the very subject of revolutionary potential, the very class that will be its undoing, its gravediggers. Production is inherently 'social' but is yet to be fully socialised; this can only be achieved by the revolutionary subject, the working class. Thus the working class, as the universal class, will carry through the task of socialisation. However, if one overcomes the dichotomy of state and civil society in a new social unity thereby closing off the distinction between the political and the social, to the extent that the state disappears so too must civil society. One will

be left with the social.⁹¹ In this sense one can argue that it is the social rather than the proletariat that features as the universal in Marx's work.

Marx inherits the concept of the universal class from Hegel, and replaces the bureaucracy with the class with radical chains that will be the redemption of humanity. But a closer reading of Marx's discussion of the universal class also yields an implicit concept of the social as the underlying universal. Marx criticises Hegel's use of the bureaucracy as the universal class and Hegel's brief attempt to suggest that anyone can become a civil servant thus:

What is crucial in the true state is not the fact that every citizen has the chance to devote himself to the universal interest in the shape of a particular class, but the capacity of the universal class to be really universal i.e. *to be the class of every citizen*. Hegel starts with the assumption of a pseudo-universal class, of universality fixed in a particular class.⁹²

Here Marx appears to expand the concept of the universal class to be inclusive, at least potentially so, of every citizen, the whole social body.

The role of the *emancipator* therefore passes in a dramatic movement from one class...to the next, until it finally reaches that class which... realises social freedom...by organising all the conditions of human existence on the basis of social freedom.⁹³

Because the rights and claims of this class are the rights and claims of society itself⁹⁴ this universal class is a sphere

which cannot emancipate itself without emancipating itself from - and thereby emancipating - all the other spheres of society... This dissolution of society as a particular class is the proletariat.⁹⁵

The point is that whilst the working class alone is a really revolutionary class⁹⁶ and therefore the only class fit to accomplish the task of universal emancipation, this emancipation, once it has been achieved, is of *individuals* from the division of labour and class itself. It is only within a new *social* form that this can be realised.⁹⁷

The depth of Marx's acceptance of the structure of Hegel's thought is apparent here. For the triadic conceptualisation of the social, civil society and the universal

class of the proletariat is analogous to Hegel's state, political state and bureaucracy. The bureaucracy in Hegel is a particular class, but its aims are universal and as such are identical with the aims of the state. The proletariat in Marx is a particular class but its aims are universal and as such are identical with the aims of society.⁹⁸ However, whilst Hegel's universal class can only mediate the separation of state and civil society Marx's universal class is intended to overcome this duality, and institute a new social order in which the social has been politicised and politics has been socialised. Thus Marx's project can be construed as the socialisation of the universal and the universalisation of the political, an ongoing socialisation of the political and politicisation of the social in a struggle to achieve 'socialised freedom'.⁹⁹ Whereas Hegel's universal class is designed to protect civil society from its own revolutionary potential by transforming social struggle into administrative mechanisms, Marx's universal class is designed to realise this potential. Whilst this strengthens his break with philosophical materialism by invoking the working class as the subject of historical transformation,¹⁰⁰ it also poses perhaps the fundamental problem for materialist analysis, indicated above: for it is in struggling for the socialisation of the universal and the universalisation of the political, the struggle for recognition, that the working class have achieved something quite different - the development of new forms of political administration to mediate these struggles. The state has been able to reconstitute bourgeois society by subsuming the struggles and turning them against themselves. This poses fundamental theoretical problems, to which the later chapters are devoted.

Reuniting State and Civil Society: suffrage and rights

The claim that the state has been able to subsume struggles and created mechanisms with which to then mediate such struggles is developed in Part Three below. Here we can note that whereas for Marx revolutionary working class struggle is for a new *social form*, the British state managed to turn this into the *social question*, namely the position of the working class within capitalism and what, if anything, should be done in order to police it. Likewise, the British state also redefined the revolutionary demand for universal suffrage and working class

rights to be acceptable *within* bourgeois society. Again, this argument is developed in Part Three, but we need to first show how and why for Marx the demand for universal suffrage and working class rights is revolutionary.

The socialisation of the universal and the universalisation of the political provides the key to a number of dimensions of Marx's work. For example, his suggestion that political emancipation is not full emancipation is not based on the rejection of reformist politics in favour of a revolutionary perspective but emerges from his understanding of the essential lack in political emancipation, namely its failure to overcome the state-civil society dichotomy and instigate a new social form.¹⁰¹ Likewise, when considering the manner in which the state has addressed the contradictions of civil society Marx's argument rests heavily on this dimension. The reason the Whigs and Tories cannot eradicate pauperism is because they seek the answer in administration. It is always the opposing sides administrative policies that are said to need changing.

The state will never discover the *source* of social evils *in the state and the organisation of society*....Wherever there are political parties each party will attribute every defect of society to the fact that its rival is at the helm of the state instead of itself. Even the radical and revolutionary politicians look for the causes of evil not in the *nature* of the state but in a *specific form of the state* which they would like to replace with *another* form of the state.¹⁰²

And when in The German Ideology Marx writes that all struggles within the state or over different forms of the state such as democracy, aristocracy or monarchy are merely illusory forms of struggle,¹⁰³ his argument again rests on the state-civil society couplet and the necessity for its supersession. The state is impotent to totally eradicate all the contradictions of bourgeois society. To abolish its impotence it would have to abolish private life. But to abolish private life it would have to abolish itself, which it cannot do.

The question therefore has to be: how does Marx envisage the reuniting of state and civil society? How is this socialisation of the universal and universalisation of the political to be achieved? One of the clearest ways he does this is through a particular conceptualisation of suffrage. The fact that the working class is not 'of' society is reflected in its lack of political substance. The fact that there is no formal

political recognition of the working class (as both individuals and a collective) other than the need for occasional uses of force against it, symbolises both the separation of state and civil society and the exclusion of the working class from being full citizens. This leads Marx to conceptualise the extension of the vote to the working class not merely as a method by which they could become individual citizens, but also as the basis for the supersession of the state and civil society dichotomy.

For Marx the vote represents a relationship of civil society to the state; the extension of the vote therefore represents an extension of the political development of civil society. Marx sees universal suffrage as a totally unrestricted form of suffrage, but this 'unrestriction' should not be reduced to the practical form whereby individuals can vote regardless of age or property qualifications. It should be thought of as elevating civil society to a level of political existence, which at the same time is the transcendence of the civil society/state dichotomy.

The vote is the *immediate, direct, not merely representative but actually existing relation* of civil society to the political state. It is therefore self-evident that the vote must constitute the chief political interest of real civil society. Only when civil society has achieved *unrestricted* active and passive *suffrage* has it *really* raised itself to the point of abstraction from itself, to the *political* existence which constitutes its true, universal, essential existence. But the perfection of this abstraction is also its transcendence [*Aufhebung*]. By really establishing its political existence as its authentic existence, civil society ensures that its civil existence, in so far as it is distinct from its political existence, is *inessential*. And with the demise of the one, the other, its opposite, collapses also. Therefore *electoral reform* in the *abstract political state* is the equivalent to a demand for its *dissolution* [*Auflösung*] and this in turn implies the *dissolution of civil society*.¹⁰⁴

Similarly, the last section of his 1844 'Draft Plan for a work on the Modern State', was intended to end with "Suffrage, the fight for the abolition of the state and of bourgeois society".¹⁰⁵

We need to be clear about the significance of suffrage here. It is not simply that electoral reform and universal suffrage are important in their concrete particularity, as part of the practical struggle in the attempt to 'conquer political power',¹⁰⁶ but because of the significance of the principle that Marx is elaborating. Hence his suggestion that electoral reform is a *demand* for the dissolution of civil society and

the *fight* for the abolition of the state. For Marx it is the political logic and historical significance of electoral reform and universal suffrage that render them important. As Colletti notes, it is not that the state-civil society dichotomy will be overcome by the introduction of universal suffrage, but that the drive towards full suffrage and electoral reform is one expression of the tendency towards overcoming the separation between state and civil society,¹⁰⁷ that is, the ongoing socialisation of the political and politicisation of the social.

It is on this basis that Marx conceives the limits of representation. This is why the Paris Commune is granted such importance. The election of representatives merely produces the superintendents of the state's interests in civil society. Representatives do not eliminate the antithesis between state and civil society but serve to 'legalise' and 'establish' it.¹⁰⁸ By comparison, in the Paris Commune the electoral process was designed to result in a working rather than a parliamentary body with municipal councillors whose responsibilities were revocable at short term, who were paid workers wages, who were mainly drawn from the working class and who followed a formal mandate from constituents. It is for this reason that thus the Paris Commune is considered by Marx to have broken modern state power, as we saw earlier.¹⁰⁹ Thus for Marx the term 'universal suffrage' has a revolutionary resonance for explicitly theoretical reasons.¹¹⁰

Marx is once again illustrating both his debt and his distance from Hegel, and nineteenth century thought in general. Hegel is critical of the idea of universal suffrage, favouring the representation of groups rather than individuals.¹¹¹ More substantively, for Hegel elections are intended to produce representation whereas for Marx they are intended to produce participation. Thus Hegel's concept of elections *retains* the separation of state and society whereas Marx's, by positing the fullest possible participation, is designed to constitute its dissolution.

Similarly, Marx is echoing the thoughts of liberal and conservative writers for whom reforming the franchise in order to allow the working class to vote could and would have considerable effects on the nature of political power, both practically and in terms of the principle it would invoke. The classic example is the work of John Stuart Mill, where the principle of electoral reform and universal

suffrage is conceded but, once its implications are drawn out, immediately revoked through a number of procedures which negate the very principle. Like Marx, Mill recognises that in practical terms electoral reform has implications for the matter of who conquers political power and, also like Marx, believes that universal suffrage would result in working class rule. Furthermore, Mill is likewise concerned with the principle that universal suffrage would invoke. Although Mill does not conceptualise universal suffrage as the demand for the dissolution of state and civil society, his concern is that if granted universal suffrage would result in people being fully fledged citizens even though they are not fit, for reasons of poverty or ignorance, to be considered as such.¹¹²

This conceptualisation of suffrage follows from the understanding of the working class as a class not of civil society. It will be argued in Part III that the entrance of the English working class into the British state from 1867 onwards marked not the demise of state and civil society but *the restructuring of their relation through the constitution of individual legal and political subjectivity on the basis of which new forms of political administration could emerge*. The point here is not whether Marx (or Mill) is right or wrong. It is that the demand for suffrage could be conceded, the demands for political recognition could be met, and then used as the political and legal basis for new forms of administration. The working class had to be granted bourgeois rights, that is, rights as *bona fide* citizens of *bürgerliche Gesellschaft*, on which their administration as political subjects and objects could be based.

Now, one of the stronger features of Marx's work is that he recognises both the power and the limits of the concept of right in bourgeois society. In modern society feudal privilege has been replaced by political right. No 'privileged exclusivity' stands opposed to other exclusivities or to the public system. The struggle between privileged exclusivities has been replaced by the struggle of individual against individual.¹¹³ Such struggles now take place on the basis of freedom. The 'rights of man' are political rights exercised in common with others receiving their legitimacy through the political state. The 'rights of man' are therefore 'the rights of the members of civil society ie of egoistic man, of man separated from other men and from the community'.¹¹⁴ As such the rights of man restate the separation

of civil society and the state and confirm the egoistic and solitary nature of modern life.

The '*Rights of Man*' do not, therefore, free man from religion but give him *freedom of religion*;...do not free him from property but procure for him *freedom of property*;...do not free him from the filth of gain but give him the *freedom of choice of a livelihood*.¹¹⁵

Political right in this sense is effectively the right to separation. In his critical notes on the Gotha Programme of 1875 Marx again states that 'equal right is still - in principle - a bourgeois right', and is therefore in content one of inequality.¹¹⁶ Whilst it is sometimes claimed that these formulations suggest that Marx rejects the concept of rights outright, it is more fruitful to read them in the way we have read Marx's comments on universal suffrage, that is, through the tension of the state-civil society dichotomy and the demand that this dichotomy be superseded. For Marx's critique is not of rights *per se*, but of *bourgeois* right, that is, right which rests on formal legal equality at the level of the political but fundamental inequality within bourgeois/civil society. Thus what is presented within liberal theory as the natural rights of man are in fact the rights to the inequalities that exist in civil society regardless of the existence of political and legal equality. These rights lack substantive content because of the separation of political and socio-economic life. In this sense Marx's comments can be read not as a rejection of rights, but of rights as they feature in bourgeois society, and his critique of them is again a matter of political logic. For Marx has inherited from Hegel the argument that rights follow from recognition; as such the demand for rights is a demand for recognition (and vice versa). As Bloch notes, Marx is concerned with the 'forward effect' of rights.¹¹⁷ The demand for rights is a demand that these be universalised, but this can only be realised in a new universal community of socialised human relations, which has thereby overcome the contradiction of the separation of state and civil society.

Here of course we come to the fundamental problem. Advocating the principle of the fullest possible participation, the principle of suffrage, and the principle that rights grant recognition is one thing. But what happens if the principle is conceded and yet is not followed by the socialisation of the universal and the universalisation

of the political? In other words, what if the capitalist state can adapt itself in a manner which grants the working class this recognition, as individuals and as a class, allows the working class into civil society and the state as fully fledged members, but does so by preserving itself rather than being abolished?

Chapter Two

From Imperialism to Ideology

State and Revolution, Parliament and Imperialism

In his denunciation of the theorists of the Second International Lukács claims that their opportunism 'is illustrated most clearly by the fact that none of them dealt seriously with the problem of the state'. There is no difference between Bernstein and Kautsky as they both accept the bourgeois state without ever examining its 'character' or evaluating it from the standpoint of the proletariat as a whole. 'Lenin was alone in regaining the theoretical heights of Marx's conception - the clarity of the proletarian attitude to the state'.¹ Placing Lenin's work on the state in the context of debates within the Second International will enable us to test the strength of this claim through a brief comparison of the second generation of what is regarded as 'classical Marxism'. It will be suggested that Lenin's work on the state is flawed in a number of fundamental ways, but that the work of Kautsky, Luxemburg and Bernstein also contains similar weaknesses. For whilst they frequently discuss state power, their concentration on and utilisation of base and superstructure rather than state and civil society (or, better still, both conceptual couplets together) results in a narrow focus on the state, and the nature of its 'determination' by the economic base. The state gets abstracted out of its relationship with civil society, with a considerable theoretical loss. Thus where for example Lenin does address the changing relation of state and civil society this is done through an account of imperialism. In contrast Gramsci makes far greater advances by adopting state and civil society from Hegel alongside base and superstructure from Marx, though as we shall see, his theoretical insights are accompanied by some theoretical difficulties.

It is often claimed that Lenin's State and Revolution stands apart from the rest of his work in being an intensely theoretical text.² His focus on the writings of Marx and Engels and his concern with the principles encapsulated by the Paris Commune are taken as indicative of this. On the one hand this creates a distinctly

Marxist perspective: Lenin suggests that the basic premise behind a Marxist theory of the state is that the state is a product of society at a particular stage of historical development, that it arises because society contains contradictions which cannot be resolved, and thus to ensure the contradictions do not consume society a power above it becomes necessary to maintain order. The state is therefore assumed to be the product and manifestation of irreconcilable class antagonisms: it arises because class antagonisms cannot be reconciled, and its existence proves that class antagonisms cannot be reconciled.³ Moreover, this means that the contradictions cannot be resolved through the state. The state, as a product of a particular historical epoch, is the organ for the oppression of one class by another: 'it creates 'order' which legalises and perpetuates this oppression by moderating collisions between the classes'.⁴

What follows from this for Lenin is that the liberation of the working class is impossible without the destruction of the state. Using the Commune in his support, and recognising the impetus the commune gave to Marx's work on the state⁵ by showing that 'the working class cannot simply lay hold of the ready-made machinery and wield it for its own purposes',⁶ Lenin argues that this should be interpreted as the call for the smashing of the state not for slow gradual 'progress'. 'The Commune is the first attempt of a proletarian revolution to smash the bourgeois state machine and constitutes the political form 'at last discovered' which can and must supersede the smashed machine'.⁷ Lenin has good reasons for taking this position, for he wants to argue that the Russian revolutions of 1905 and 1917 continue the work of the Commune and corroborate Marx's analysis.⁸ It is for this reason that commentators talk of the 'libertarian' Lenin.⁹

On the other hand, Lenin is quite adamant that 'the proletariat needs the state'.¹⁰ Whilst he recognises that this is also pointed out by Kautsky and other 'opportunists' and 'social-chauvinists' he argues that they all forget that the proletariat only needs the state that is withering away. Furthermore Lenin is adamant that the state under control of the working class will be used for the suppression of the bourgeoisie. This follows from the fact that the state is by its very nature an organisation of violence for the suppression of a class. The state will therefore be used by the majority of the population, the formerly exploited class,

to suppress the minority, the former exploiters, and in doing so it will abolish exploitation immediately. Thus

the proletariat needs state power, the centralised organisation of force, the organisation of violence, for the purpose of cracking the resistance of the exploiters and for the purpose of *leading* the great mass of the population...in the work of organising socialist economy.¹¹

That is, Lenin's thesis is one of massive centralisation, at least for the period of the dictatorship of the proletariat, until the state withers away. Consequently next to the libertarian Lenin is a Lenin arguing for the taking of political power by the working class, using it for suppressing reactionary forces, and concentrating the means of production under the control of the state.

There are thus two strands of thought in State and Revolution. One involves the dictatorship of the proletariat suppressing the bourgeoisie and eliminating oppression; the other takes from the Paris Commune, invokes the smashing of the state and the transfer of its functions into the people's own organisations. It is not my intention here to suggest which of these two dimensions is the one Lenin most consistently holds. Rather I am concerned to show that despite these two dimensions Lenin fails to provide an adequate analysis of the capitalist state. Even if it were the case that his libertarianism illustrates a significant counterpart to his stress on the importance of the state (especially after a revolution), libertarianism *per se* is fundamentally flawed in its understanding of the state.

These points rest heavily on the fact that whilst theoretical, Lenin's text is also concerned with practical issues, for it constitutes an attempt to intervene in the struggle within the system of dual power between the provisional government and the Soviets, on the side of the latter. The manuscript breaks off at the beginning of the seventh chapter entitled 'The Experience of the Russian Revolutions of 1905 and 1917' which was to analyse 'the most important lessons of experience. Those touching directly upon the tasks of the proletariat in the revolutions in relation to state power'. It therefore cannot be read solely as a theoretical document.

Central to Lenin's analysis of the state is a critique of bourgeois Parliamentary democracy and the 'parliamentary fetishism' of Lenin's opponents, and it is with this that the weaknesses of Lenin's analysis begin to be revealed. He suggests that

Marx's critique of parliamentarism has been forgotten, or else is regarded as anarchism, and that the revolutionary solution is the conversion of Parliament into a working body, again using the Commune as an example.¹² This is based on, yet supplements, Lenin's critique of the concept of 'democracy'. The concept of a 'free people's state', the programme of the German SPD in the late-nineteenth century, is considered by Lenin, following Engels, to be fine as an agitational position. But the way it is used by the SPD is as an opportunistic slogan that lacks an understanding of the state in general, and in which the only political content is a 'pompous philistine description of the concept "democracy"'.¹³

For Lenin a democratic republic is the best form of state for the proletariat *under capitalism*. But since capitalism is a system of wage-labour for the working class and every state is a repressive force for the suppression of a particular class, parliamentary institutions serve to mask the real power relations of bourgeois society. Hence democracy is merely a particular state form, and will disappear with the state. Since it is only revolution that can end the bourgeois state, a revolution will also end democracy, as this too withers away.

Now, much of this is designed as an attack on the theoreticians of the German SPD, especially Kautsky, whose prevarications over the revisionist issue led to his denunciation by Lenin. As articulated by Bernstein the revisionist perspective focuses on a number of dimensions of capitalist society - the increasing standard of living, the growth of cartels, the extension of the credit system, the increase in the number of capitalist enterprises and the decrease in their average size, and the role of the Party in these changed conditions - from which it is concluded that the 'inevitable crisis' that capitalism is 'bound' to suffer is unlikely. The outcome is an increasing focus on Parliament as the central object of practical and theoretical activity. Since the collapse of capitalism is far from likely, prosperity growing and democratisation in all spheres increasing, it is to this that socialists should be committed, and it is to this end that parliament can be used. For these reasons Bernstein questions whether the state is not incompatible with democratic self-government. Since the breaking down of nation-states into small autonomous communes is both unlikely and unwelcome for Bernstein, he concludes that some kind of administrative unit large enough to co-ordinate a society of vast space and

numbers is necessary. So for example, Bernstein questions whether an extensive railway network could be run by small autonomous groups. But he develops this further. He also argues that it would be impractical for the officials appointed to co-ordinate this 'administrative unit' (state) to be elected through direct popular elections. Similarly he argues that a law-making and law-keeping agency is needed to maintain order and ensure that individuals follow rules. In other words, society has reached such a degree of complexity that a state is necessary.¹⁴

The essential characteristics of the state will therefore remain as before: a centralised body apart from society, controlling society, representing 'common interests' and maintaining 'harmony'. Because of this he argues that socialism is being realised through democratic changes and reforms in both economic and political life. For this reason it is not the final goal of socialism that is important, but the movement. Social democracy should fight for reforms in and through the state.

Kautsky's response to this is complex. Whilst Bernstein had been developing his thesis Kautsky had also been arguing that due to changing conditions the socialist approach to the state must adapt, both theoretically and practically. Significantly, any project of 'direct democracy' was doomed to failure; although the state apparatus constructed by the bourgeois class could be used for different political purposes, it could not be shattered.¹⁵ Yet Kautsky writes that Bernstein's 'socialism seems to be the consummation of liberalism' and adds that revolution remains the fundamental aim of social democracy. Social revolution is the necessary final objective which every independent proletarian political party must strive for.¹⁶ So whilst the movement should struggle for reforms, the final aim is still revolution and the conquest of power by the working class. At the heart of this is a Parliamentary road to socialism, for by winning reforms through Parliament the working class would be able to overcome both economic and political degradation, and it is only by changing the character of Parliament and strengthening it against other departments that socialism can be properly instituted. Thus for Kautsky Parliament is central to both the theory and practice of socialism. In other words, Kautsky wants both revolution and the state.

Lenin rejects this, claiming that for Kautsky

‘Theoretically’ it is not denied that the state is the organ of class rule, or that class antagonisms are irreconcilable. But what is lost sight of or glossed over is this: that if the state is the product of irreconcilable class antagonisms, if it is a power standing above society and ‘*increasingly alienating itself from it*’, it is clear that the liberation of the oppressed class is impossible not only without a violent revolution, *but also without the destruction* of the apparatus of state power which was created by the ruling class and which is the embodiment of this ‘alienation’.¹⁷

It is for this reason that Kautsky is denounced for opportunism and betrayal of Marx’s doctrine.¹⁸ This criticism is heightened after Kautsky’s criticism of the Revolution, based as it is on a distinction between dictatorship and democracy: firstly the dictatorship of the proletariat in Russia is not based on democracy and, secondly, it is not a dictatorship of the proletariat at all, but of a small organised group within the Party. Thus ‘starting out with the idea of establishing the dictatorship of the proletariat the Bolshevik regime was bound to become the dictatorship of the Party within the proletariat’. For example, Kautsky regards the decision in 1918 to exclude the Social Revolutionary Party from the central state organs and Soviets as both an undemocratic decision and a logical consequence of the Soviet Constitution.¹⁹ Similarly the decision to dissolve the Constituent Assembly in December 1917 after the election failed to give the Bolsheviks the majority is justified by Lenin on the grounds that ‘it did not express the real voice of the whole people’, which leads him to declare that ‘any assembly elected by the masses by general suffrage was not suitable’.²⁰

The significant feature of debates around the revolution is that they indirectly raise the question of the socialisation of the political and the politicisation of the social. Kautsky is critical of the manner in which the revolution fails to politicise key elements of society and socialise key elements of politics. However, because Kautsky’s own position rests so heavily on a representative Parliament and a rejection of ‘direct democracy’ he is open to the very same criticism. It is Luxemburg who draws this out most clearly. Her critique of the revolution rests heavily upon the idea of the necessity for the universalisation of the political. Sensitive to the same issues as Kautsky she suggests that ‘every right of suffrage, like any political right in general, is not to be measured by some sort of abstract scheme of ‘justice’ or in terms of any other bourgeois democratic phrases, but by

the social and economic relationships for which it is designed'.²¹ Thus the Bolshevik policy to give the right to vote only to those who live by their own labour is criticised not because it is 'unjust' but because it is incomprehensible - 'such a right to vote has meaning only in a society which is in a position to make it possible for all those who want to work an adequate civilised life on the basis of ones own labour'. Furthermore, she criticises Lenin and Trotsky on the grounds that their decisions are bound to result in a dictatorship not of the proletariat but of a handful of members of the central Party elite; thus the politicisation that comes with the suffrage and control of the state does not function as part of an ongoing universalisation of the political and human emancipation, but acts to stifle it. Where freedom exists only for members of the governing party it is not freedom at all. Echoing Marx on the nature of the universal she writes that the dictatorship of the proletariat must be 'the dictatorship of the class, not of a party or clique - dictatorship of a class, that means in the broadest public form on the basis of the most active unlimited participation of the mass of the people, of unlimited democracy'.²²

In many ways these debates alert us to some of the questions raised when politics is transformed such that the working class can participate in a fundamental way, can become part of civil society and politicised in the process, and yet bourgeois society remain unchanged in substance. Part of the difficulty in the debates within the Second International is the very different conditions that different writers were in and aware of. Lenin fails to appreciate the very practical issues posed by Parliament and suffrage in Germany. It has been said that 'in a literal sense, *Lenin did not know what he was talking about*',²³ because although he discusses Parliament the world was practically devoid of examples of Parliaments that could be called genuinely representative in even the formal sense. As Therborn has shown, only New Zealand, Norway and Denmark had suffrage without qualifications by 1915.²⁴ However, Therborn also makes it clear that most capitalist states were moving towards universal suffrage by 1915, especially key states such as Britain, Germany and France. In this sense it is not that Lenin did not know what he was talking about, but that *he ignored the very thing he should have been talking about*.

On the other hand, there is a sense in which it *is* true to say that Lenin did not know what he was talking about. When he discusses Parliament and democracy it is from a significant practical and theoretical distance. In real terms the twin issues of Parliament and democracy were minor issues in Russia. Compared to the situation in Germany where the SPD could win seats in a Parliament and from there fight a battle over ‘democracy’ the Russians had no equivalent experience. Given its ineffectual and powerless nature the existence of the Duma posed merely another minor tactical problem²⁵ and even in 1920 the question of Parliament remains a question of tactics.²⁶ In this sense Lenin shows his rootedness in essentially Russian conditions, and his analysis of the state is affected accordingly. If nothing else Bernstein and Kautsky had a sense that the extension of suffrage meant a fundamental change to the nature and ordering of capitalist states, and that theoretical development was necessary.

There is a further sense in which the focus on Parliament in the debates in the Second International obscures the fundamental aspect of state development, for which theoretical development was also urgently needed. There is a constant slippage in much of this work between ‘state’ and ‘parliament’, as though the former is reducible to the latter. Yet the extension of the franchise was not the only mechanism through which the working class were incorporated into bourgeois society; it is argued here that this incorporation, taking the form of political and legal subjectivity, provides the basis for further incorporation, as objects of political administration. The mechanisms through which this operates were largely in place by 1918, and yet are largely ignored by these writers, focusing as they do on Parliament. It could be argued that for them the question of the state is dissolved into the question of Parliament, a dissolution which serves to obscure the role of political administration as a central mediating mechanism between state and civil society and its role in subsuming struggle. This dissolution is compounded by the absence of any theoretical account of civil society in this work. In the debates we have so far addressed the category ‘society’ serves to function as the state’s ‘other’, but is conceived either as ‘economic base’ or as the thing that the state oppresses. This affects the account of the development of administration.

Lenin's attempt to conceptualise the development of the relationship between state and civil society rests on two weaknesses: its dependence on the category 'imperialism' and its inability to conceive of the working class as part of civil society, apart from the 'labour aristocracy'. Lenin here relies heavily on Bukharin, who argues that the development of imperialism changes the nature of state power. Bukharin suggests that

in contrast to the state in the epoch of industrial capitalism, the imperialist state is characterised by an extraordinary increase in the complexity of its functions and by an impetuous incursion into the economic life of society... The requirements of imperialist development compel...the state [to] absorb into itself the whole multitude of bourgeois organisations.²⁷

Following Bukharin, Lenin argues that imperialist desires and the new form of finance capital evolve new forms of state mechanisms to protect bourgeois society: powerful banks, nationalisation of communication networks, links between state and banks, cartel and trusts.

The turn towards imperialism - meaning by that the complete domination of the trusts, the omnipotence of the big banks, a colonial policy on a grand scale...has brought the 'devouring' of all the forces of society by the rapacious state power to the verge of complete catastrophe.²⁸

Lenin uses this to strengthen his adoption of Marx's work on the French state of the 1848-52 period,²⁹ but in doing so he uncritically adopts Marx's understanding that the working class are not of civil society. In this he is bolstered by Bukharin's suggestion that only two possibilities avail themselves: either workers organisations 'become a simple appendage of the state apparatus' or they outgrow the confines of the state and explode it from within.³⁰ Since only 'yellow social democrats' accept the first option, Bukharin suggests that the second is the probable outcome. Bukharin's revolutionary faith leads him away from the real world; he cannot accept that the capitalist state could concede that level of assimilation. Lenin follows him in this, suggesting that the bourgeoisie 'is prepared to concede everything except the transformation of the organisations of the class which it oppresses into state organisations'.³¹ Lenin can only conceptualise the working class becoming part of society at its highest levels, its 'aristocratic' elements, but

even this assimilation has no formal administrative foundation; it is entirely a product of key individuals' desire for personal gain - the labour aristocracy is bribed by the bourgeoisie, bought off as part of a subtle ploy by the bourgeois class.³²

Moreover, the suggestion that the state seeks to absorb sections of society because of its imperialist ventures posits this development of the state entirely in terms of its external, international aspects. It is as though the development of the state is structured entirely by the economic demands of the bourgeois class, which happen to be focused on external markets. This completely overlooks the fact that the kind of mechanisms being discussed are a *product of class struggle on the domestic front*, as will be illustrated in the case of Britain in Part III. In other words, Lenin's analysis appears to write class struggle out of the development of the capitalist states.

Furthermore, because Lenin's 'microscopic universe'³³ does not include modern administration it fails to address this phenomenon. Lenin's analysis is lacking precisely because it is not of the modern administrative state but is a critique of the obsolescent Russian one. This will hardly suffice in an attempt to develop a materialist analysis of the capitalist state in the twentieth century. However, the Germans did have experience of such administrative mechanisms and yet they too failed to deal with them theoretically. The focus on Parliament directed attention away from the mechanisms of political administration being developed to mediate the contradictions of civil society as the working class become incorporated.

Hegemony and the Expanded State

In an insightful passage in his Prison Notebooks Gramsci points to the way the rise of sociology has led to a decline in political science and the art of politics, one result of which is a severely impoverished concept of the state.³⁴ Gramsci recognises this impoverished concept of the state is also present in Marxism, especially the Marxism of the Second International, which has lost the concept of the political. It is for this reason that Gramsci turns to Hegel and the Italian idealists for a more sophisticated concept of the state and the political.³⁵ Thus whilst it is true that Gramsci's work should indeed be read as an attempt to offer

a sustained Marxist analysis of the bourgeois state, as many commentators suggest, its Hegelian heritage needs to be stressed. A focus on his ‘“structural” leninism’ as the ‘most complex expression of leninism’³⁶ fails to do justice to the significance of Gramsci’s attention to the political.

In his earlier writings Gramsci follows Lenin and Bukharin in arguing that imperialism leads to a changed role for the state, because ‘in the imperialist phase of the historic evolution of the bourgeois class industrial power is divorced from the factory and concentrated in a trust, a monopoly, a bank, the state bureaucracy’, the state undergoes a number of changes.

During the war and as a result of the necessities of the war, the Italian state took over the regulation of the production and distribution of material wealth as one of its functions. A sort of industrial and commercial trust has been set up, a sort of concentration of the means of production and exchange.³⁷

For Gramsci the requirements of imperialist expansion and the demands of war lead to greater state involvement, ‘regulation’ in economic life, as it takes over production and material ‘functions’. From this follows two things: first, this imperial expansion of the state raises the possibility for renewed working class activity, for the national co-ordination of the economy raises the possibility of a system of factories established on the basis of workers councils; second, these developments in the state reveal an underlying crisis in which the state shows its shaky foundations, and from this the possibility of the working class conquering the state arises.

This involves a change in the position of the working class:

The worker, freed from the bosses subjection and from the servile mentality generated by a hierarchy, and driven too by the new social conditions resulting from the new historical phase, achieves priceless gains in terms of autonomy and initiative.³⁸

Because the Italian state had revealed itself as dependent on the changes within the imperialist order Gramsci argues that the bourgeoisie has relinquished the claim to represent the nation and that the working class is the only force which can ‘arrest

the process of dissolution of national unity'. This raises the fundamental problem of leadership, to which we shall return in a moment.

What needs to be registered here is Gramsci's early conception of the changes in state power. He is working with a crude periodisation involving a comparison between the 'liberal' and 'imperialist' phases in the historical evolution of bourgeois society. This is heavily determined by Lenin's work on the imperialist stage of capitalist development. This broad periodisation will continue in Gramsci's work, and feeds into his two conceptions of the state. As these two conceptions are developed, and the concept of hegemony is expanded beyond the question of leadership, he loses the focus on imperialism. This allows for a more sustained attempt at conceptualising some of the historical changes, through his two conceptions of the state and via the expanded concept of hegemony.

Despite the above comments it should be noted that even though he works with this historical distinction in his earlier work Gramsci is concerned that the Italian state is atypical in the sense that it did not evolve into a constitutional democratic state but had to be created by industrial capitalism. The peculiarity of the Italians is that 'the Italian state has never been liberal'.³⁹ In fact the Italian state barely concealed the fact that it was the dictatorship of the possessing class through bourgeois liberal democratic institutional means such as the separation of powers and the extension of civil liberties. In his concern for the peculiarities of the Italian state Gramsci suggests that:

the present phase of the class struggle in Italy is the phase that precedes: either the conquest of political power on the part of the revolutionary proletariat and the transition to new modes of production...or a tremendous reaction on the part of the propertied classes and governing caste. No violence will be spared in subjecting the industrial and agricultural proletariat to servile labour: there will be a bid to smash once and for all the working class' organs of political struggles (the Socialist Party) and to incorporate its organs of economic resistance (the Trade Unions and co-operatives) into the machinery of the bourgeois state.⁴⁰

Because of this Gramsci sees the need to develop a more comprehensive analysis of the state in Western Europe, and in the process he fundamentally transforms the category 'hegemony'. 'Hegemony' was in fact in wide use prior to its adoption by

Gramsci, being used by Lenin, Stalin, Bukharin, Plekhanov and Zinoviev amongst others. It was a key term from the 1880's as part of the strategy for overthrowing Tsarism.⁴¹ The term traditionally referred to the type of leadership exercised by the proletariat over other groups, such as the peasantry and intellectuals, in alliance against Tsarism. In his earlier works Gramsci adheres to this meaning: 'the revolution presents itself in practice as the hegemony of the proletariat leading its ally: the peasant class.'⁴² and he asserts its Leninist heritage.⁴³ A number of events conspired to make the whole question of proletarian leadership subsidiary to a much broader question. These centre on the absence of revolution in Western Europe. Notable here is the failed German revolution of 1918 and the defeat of the council movement in Italy, which would go down as the 'missed-out' or 'failed' revolution.⁴⁴ To this we can add the triumph of fascism and the nature of developments within the Soviet state. These events created an even more pressing need to develop materialist analysis, to which Gramsci responds.

A certain number of observations and criteria must form the basis for...study. The first of these concerns the fact that in the advanced capitalist countries the ruling classes possess political and organisational reserves which it did not possess, for instance, in Russia. This means that even the most serious economic crises do not have immediate repercussions in the political sphere. Politics always lags behind economics, far behind. The state apparatus is far more resistant than is often possible to believe; it succeeds, at moments of crisis, in organising greater forces loyal to the regime than the depths of the crisis might lead one to suppose. That is especially true of the more important capitalist states.⁴⁵

Now, for Gramsci this difference between East and West is compounded by the very different degrees of development of civil society in the two regions. In one of his key insights, which also signals one of his significant conceptual developments, Gramsci suggests that

In the east the State was everything, civil society was primordial and gelatinous; in the West, there was a proper relation between State and civil society, and when the State trembled a sturdy structure of civil society was at once revealed.⁴⁶

In other words, one of the major differences between East and West, and therefore one of the reasons for the failure or absence of revolution in the West, is the existence and nature of civil society. Gramsci is therefore positing the state-civil society dichotomy as one that is fruitful for an understanding of the nature of power in Western states. In particular, the understanding of state power is dependent upon the understanding of civil society and its relation to the state.

This is of most concern to Gramsci because it raises questions about tactics - leading him to draw a Kautskyan distinction between war of manoeuvre and war of position (Kautsky's war of annihilation and war of attrition respectively)⁴⁷ where the existence and nature of civil society in the West makes a slower and more gradual war of position necessary. It also has the advantage of shifting his focus away from questions concerning imperialism and the limitations inherent in it, towards the factors *internal* to nation-states. Gramsci recognises that after 1848 the development of the state involved not just the mobilisation of society for imperialist venture, but the expansion of parliament and administrative organisations, all in order to safeguard the political and social order.

Modern political technique became totally transformed after Forty-eight; after the expansion of Parliament and of the associative systems of union and party, and the growth in the formation of vast State and 'private' bureaucracies (i.e. politico-private, belonging to parties and trade unions); and after the transformations which took place in the organisation of the forces of order in the wide sense - i.e. not only the public service designed for the repression of crime, but the totality of forces organised by the state and by private individuals to safeguard the political and economic domination of the ruling classes.⁴⁸

This is not just a question of state development; it simultaneously involves an increasing complexity in civil society.⁴⁹ The problem of tactics posed here leads Gramsci to argue that the war of manoeuvre is no longer appropriate and needs replacing with a war of position; this results in an expanded concept of hegemony. He writes that

In the period after 1870 with the colonial expansion of Europe...the internal and international organisational relations of the state became more complex and massive, and the Forty Eightist formula of the 'Permanent Revolution'

is expanded and transcended in political science by the formula of 'civil hegemony'.

And he goes on to add that

the state is the entire complex of practical and theoretical activities with which the ruling class not only justifies and maintains its dominance, but manages to win the active consent of those over whom it rules.⁵⁰

Thus it would seem that the state maintains political order by means of winning consent from the masses, and materialist analysis now needs an understanding of 'civil hegemony'. Hegemony no longer refers to the question of leadership, but designates the dominance of the ruling class, and now operates in, or functions through, both state and civil society. The expansion of the concept is thus twofold: on the one hand the application of the concept has shifted from the working to the bourgeois class; it no longer points to the problem of proletarian leadership but designates the nature of class rule in general. On the other hand because it is extended in this first way, it now includes the various cultural, intellectual and moral institutions of civil society and the state.⁵¹

We will return to this expanded concept of hegemony below; before we can go further with it we need to examine Gramsci's expanded concept of the state. His sensitivity to the contrast between the liberal state and the state as it develops after 1870 leads him to expand the concept of the state in Hegelian fashion, such that he moves towards an identification of state and civil society: state and civil society have become enmeshed, with the state intervening and controlling the previously separate spheres of civil society.

Gramsci argues that the liberal claim that the state should not interfere with economic activity, which is a part of civil society, is absurd 'since in reality civil society and the state are one and the same'.⁵² Moreover

the general notion of state includes elements which need to be referred back to the notion of civil society (in the sense that one might say that state = political society + civil society, in other words hegemony protected by the armour of coercion).⁵³

Gramsci's Hegelianism is evident here, and he makes a point of registering this heritage. It is this conception that Gramsci uses to understand the 'integral state': 'In politics the error occurs as a result of an inaccurate understanding of what the state (in its integral meaning: dictatorship + hegemony) really is'.⁵⁴ This state is the entire complex of practical and theoretical activities with which the ruling class rules and justifies its rule.⁵⁵

However, along with this *expanded* concept of the state exists another, *narrower* concept, in which the state is equated with political society and contrasted to civil society.

What we can do...is to fix two major superstructural 'levels': the one that can be called 'civil society', that is the ensemble of organisms commonly called 'private', and that of 'political society' or 'the state'.⁵⁶

The equation of state with political society serves to distinguish it from the non-political.⁵⁷ Anderson suggests that in Gramsci's work 'the state itself oscillates between three definitions' where the state *contrasts* with civil society, *encompasses* civil society and is *identical* with civil society.⁵⁸ In fact Gramsci is working with two conceptions where the state either contrasts with civil society or encompasses it (which would include Anderson's third definition). It is this dual conception - a narrow one (in which the state is contrasted with civil society) and an expanded one (in which the state encompasses civil society) - which concerns us.

It was noted above that one of Gramsci's suggestions is that we think of state and civil society as two superstructural levels. It is here that we find elements of Gramsci's Marxism. In the last chapter it was suggested that the state-civil society couplet in Marx becomes bound up with, and partly superseded by, the base-superstructure couplet. Likewise it has been noted here how Gramsci's adoption of the state-civil society couplet is rooted in his reading of Hegel rather than Marx. However, what Gramsci does adopt from Marx is precisely the base-superstructure (or, 'structure-superstructure') couplet. Two issues arise from this. In the process of *adopting* it from Marx Gramsci also *adapts* it; and in

working with both couplets, the one from Marx and the one from Hegel, Gramsci seeks to combine the two.

Gramsci takes from Marx the insight that it is civil society that is the focal point of history, embracing as it does material life and the struggles therein. This would appear to posit it as the structural level. For Gramsci, however, civil society belongs not to the structural sphere but to the superstructural, as we have seen. Thus for both Marx and Gramsci civil society, and not the state, represents the active and positive sphere; but whilst for Marx this active and positive sphere is a structural phenomenon, in Gramsci it is superstructural. As Bobbio notes, this brings into focus two very important points: firstly that Gramsci's concept of civil society derives from Hegel's; and secondly that Hegel's concept of civil society, as understood by Gramsci, is superstructural.⁵⁹

To explain this we need to consider the differences between Gramsci's appropriations of Marx and Hegel. Gramsci is aware of the need to develop Marxism in a fashion adequate to historical developments. In particular he regards economism, with which Marxism was now closely associated, as a stumbling block and for this reason seeks to break with the economistic tendencies within Marxism.⁶⁰ He suggests that economism regards everything as economics, yet between the premise (economic structure) and the consequence (political organisation), relations are by no means simple and direct; it is not only by economic facts that the history of a people can be documented. 'Mechanical historical materialism does not allow for the possibility of error [on the part of leaders], but assumes that every political act is determined, immediately, by the structure'.⁶¹ Rather than economic determinism Marxism requires an understanding of the primacy of the political.⁶² However, his critique of economism does not lead him to break with Marxism in the manner of Bernstein, but to a more sophisticated attempt to conceptualise the problem through state, civil society and economic structure (base). In the process of performing this task Gramsci separates the economic base/structure from the concept of civil society. Thus on the one hand the economic base is seen as one side of a structure-superstructure dichotomy, on the other hand the superstructure is taken to include two levels, one of which is civil society.

As we have seen, civil society for Hegel includes not only the economic structure but also the forms of organisation that arise from it and seek to regulate it. Gramsci regards Hegel's conception of association as 'vague and primitive'; being 'halfway between the political and the economic' Hegel's corporative organisation constitutes 'a politics grafted on to the economy'.⁶³ It would therefore appear that Hegel's civil society that Gramsci has in mind is not its economic moment - the system of needs - but the range of institutions which regulate them, precisely the institutions that provide the basis for administration.⁶⁴ Thus Gramsci's conception of Hegel's civil society is that it is a superstructural moment, halfway between the political and economic.

In this sense Gramsci is seeking to combine both the state-civil society and base-superstructure couplets in a different way to Marx, and in so doing move beyond the limitations he regards as inherent in both. This takes him beyond both Hegel and Marx. This formulation helps shed light on the importance of the dual concept of the state in Gramsci's work, and the manner in which both the narrow and expanded concepts work. In the narrow conception, in which the state is equated with political society, civil society appears to operate as a layer between the state and the economic structure. This would explain why a war of position leading to the winning of civil society was necessary before political power could be fully conquered. The fundamental problem with this conception is that it tends to utilise a far more limited concept of hegemony, to which we must now return. However, as we have seen, Gramsci also has an expanded concept of hegemony; our discussion of the expanded concept of the state can now shed light on the importance of this move, but we must first raise the further couplet, coercion and consent. In doing so we will seek to defend Gramsci from a Eurocommunist and post-Marxist reading.

For Gramsci coercion and consent are key elements in the relationship between the proletariat and the peasantry in their hegemonic relationship during a bourgeois revolution; in this he does not differ from other writers who utilise 'hegemony' to designate political leadership. However, the expansion of the hegemony concept results in a fundamental change to the coercion and consent couplet. Taking from Machiavelli the distinction between two ways of fighting - by law or by force -

where the first is natural to men and the second to beasts, and agreeing that as the first way often proves inadequate one must have recourse to the second, Gramsci transforms this duality into 'force and consent, authority and hegemony, violence and civilisation'.⁶⁵ Thus the duality of coercion and consent can be said to be valid in any historic epoch for Gramsci.⁶⁶ Now, separating these dualisms out in the way Anderson does makes it appear that on the one hand there is force, authority and violence, and on the other there is consent, hegemony and civilisation. Hegemony is here distinct from force and within the same 'grouping' as consent. So hegemony is consent; consent is achieved through hegemony in 'civilised' society. It is autonomous from the use of force or violence as the means of domination.

Thus in the narrow conception of the state hegemony appears as the moment of consent captured in civil society, counterpoised to coercion that is concentrated in the state - hence Gramsci's suggestion in the passage above that the two superstructural levels 'correspond on the one hand to the function of "hegemony" which the dominant group operates throughout society and on the other hand to that of "direct domination" or command exercised through the state.'⁶⁷ The point then is that where Gramsci works with the narrow conception of the state he also works with a narrow conception of hegemony. The state becomes associated with organised coercion, and civil society becomes the arena of hegemony. Such formulations partly explain why some commentators have mistakenly concluded that hegemony is specifically a concern of civil society. Mouffe, for example, suggests that for Gramsci 'the concept of the integral state...serves primarily to demonstrate that civil society...is in fact the place where the hegemony of the bourgeoisie is exercised', and she maintains that in Gramsci's work the concept hegemony has nothing to do with the 'phenomenon of state intervention in the social sphere' or any 'enlargement of the state'.⁶⁸ The problem with such a formulation is that it only succeeds if one ignores Gramsci's expanded state concept, precisely that dimension of his work that is the most fruitful.

As we have seen, when Gramsci works with his expanded conception of the state, civil society is read as a moment of the state; the point here is that the concept of hegemony undergoes a equivalent expansion. In this conception

hegemony *incorporates both coercion and consent*. For example, Gramsci suggests that behind the separation of powers between judiciary, legislature and executive there is a fundamental unity of the state, and that 'all three powers are also organs of political hegemony'.⁶⁹ Since political society is either *part* of the state⁷⁰ or is *identical* with the state⁷¹ it would seem that hegemony is also a function of the state. Similarly there are occasions in which Gramsci argues that hegemony involves the use of force:

The 'normal' exercise of hegemony on the now classical terrain of the parliamentary regime is characterised by the combination of force and consent which balance each other reciprocally.⁷²

Since the means of the legitimate use of force is monopolised by the state, to argue that the exercise of hegemony is partly characterised by the use of force must imply that hegemony is exercised through the state. And when considering the politics of Croce and Gentile, Gramsci is critical of the way Croce's liberalism leads him to maintain a distinction between civil and political society, between hegemony and dictatorship, and how Gentile's fascistic focus on the state at least allows him to recognise that 'hegemony and dictatorship are indistinguishable, force and consent are simply equivalent'.⁷³ In other words, the question of hegemony is not about coercion *or* consent, but about coercion *and* consent. Moreover, because it is integrally related to Gramsci's articulation of the expanded state concept, hegemony is incorporated into the state itself.⁷⁴

In many ways this 'problem' of coercion and consent is a side issue, detracting from far more substantive points. It undoubtedly has its roots in Gramsci's Italian background, stemming from the influence of Machiavelli and Croce. But the issue of coercion and consent is of essentially liberal origin and concern. For Marx there is no real theoretical problem with coercion and consent as they are two moments of the process of class domination. Thus although Marx recognises the state as a force of coercion, he also sees how it is presented as a force representing the whole community and working for the 'public good'.⁷⁵ In adopting the problem of Machiavelli's centaur Gramsci problematises the coercion-consent couplet. As Hoffman notes, the synthesis of coercion and consent that exists in the classical

tradition has to be taken apart to be analysed; this Gramsci does. But in analysing them he loses the synthesis found in Marx.⁷⁶ He is drawn to this because of the specifically Italian intellectual context in which he is working. Marx treats coercion and consent as synthesised within the unity of domination because he accepts the Hegelian principle that social order is constituted through a process of struggle and recognition. Classes are constituted not through a process of coercion or consent but through struggle for domination. It is through this process that order is constituted. Considering the process this way affirms the class nature of this struggle and renders the issue of 'coercion or consent' irrelevant. Gramsci recognises that it is classes that are hegemonic; but it is precisely the class nature of hegemony that runs the danger of being relegated through a focus on the issue of coercion-consent.

Moreover, in relegating the issue of class struggle one is in danger of expanding the concept 'hegemony' to the point where it becomes vacuous. Here we can extend our criticism of Mouffe initiated above. It is precisely the absence of classes that constitutes the key deficiency of the attempt to focus exclusively on hegemony as central to socialist strategy in the attempt to move towards a 'radical democratic politics'. In this move Gramsci's call for a war of position is refused on the grounds that it supposes the division of the social space into two camps, a supposition that is denied. This denial results in a socialist strategy that conceptualises hegemony without classes.⁷⁷ Yet at the heart of Gramsci's concept of hegemony is class. Again, it is Gramsci's expanded concept of the state that becomes important. As Buci-Glucksmann notes, the expanded concept of the integral state, (and here we must add: *or something like it*) becomes the touchstone for a Marxist analysis, contra Mouffe's claims above.⁷⁸

Buci-Glucksmann is correct to claim that Gramsci's work on hegemony makes sense if we accept that in his later work he operates with an expanded concept of the state and we examine hegemonic apparatuses rather than hegemony.⁷⁹ This is useful because, as she points out, Gramsci's expansion of the concept of the state is located within a precise polemical and theoretical context; the expansion of the concept of the state is a response to the expansion of the state itself: the expansion of the state involves an incorporation of hegemony and its apparatuses into the

state.⁸⁰ Hegemony, as Adamson notes, 'is a concept whose thrust is to circumvent all sharp distinctions of base and superstructure which treat the latter as mere epiphenomenon, as in many Second International Marxisms, or which assume that a new superstructure can be built independently of the base, as in Lenin's voluntarism'.⁸¹ The point being that hegemony is used in conjunction with the three couplets, base-superstructure, state-civil society and coercion-consent, and directly linked to class.

The importance of the expansion of the hegemony concept can be illustrated through a brief discussion of law. Gramsci is well aware of the coercive moment in law. He writes that

the greatest legislative power belongs to the state personnel (elected and career officials), who have at their disposal the legal coercive powers of the state ... The state represents the coercive and punitive force of juridical regulation of a country.⁸²

However, he is also aware that the coercive element is part of a wider function of law. Because law provides the basis for the non-coercive constitution of political order Gramsci regards the 'juridical problem' as one of 'assimilating the entire grouping to its most advanced fraction'. That is, 'through 'law' the ruling group is rendered 'homogeneous', and creates a social conformism which is useful to the ruling group's line of development'. The state is central to this process but law 'is wider than purely State and governmental activity and also includes the activity involved in directing civil society'.⁸³ This reiterates the insights of Hegel and Marx and points to their common belief that there is not, *pace* Foucault, a crude distinction to be drawn between (repressive) law and norm; rather law is central to norm creation and the technical administration of civil society.⁸⁴

Why then is the expanded concept of the state useful, and can it be utilised for a materialist analysis of the state? It has already been noted that Gramsci is concerned with the tactics of the communist movement. Central to this must be an understanding of the nature of power in capitalist societies, which in turn must involve an understanding of the relationship between state and civil society. Gramsci is sensitive to the changes that this relationship had undergone and was still undergoing; it is significant that when he expands the state concept it is in

relation to events after 1848 (or 1870). Gramsci is adamant that the distinction between state and civil society is methodological and is highly critical of those who regard it as organic.⁸⁵ Gramsci is undoubtedly right to insist on the necessity for an expanded state concept, for the narrow conception conceptualises civil society as depoliticised, outside the sphere of the political, whereby politics is reduced to the state. With an expanded concept the political nature of civil society (at least potentially so) opens itself to theorisation. Now, there is no doubt that Gramsci is engaged in an attempt to understand precisely those changes that the state and civil society were undergoing in Western Europe, and he recognises that to do this a narrower state concept simply will not do. However, when he discusses the manner in which the state and civil society are one and the same we find that he *incorporates* civil society into the state; being encompassed by the state results in civil society and the state becoming identified as one and the same. Doing this runs the danger of all forms of domination being subsumed within the state. One runs the risk of all apparatuses being theorised as state apparatuses, precisely the move we will find Althusser makes, from which it becomes impossible to distinguish between the differential functioning of different institutions of domination.

On the one hand, it becomes difficult, if not impossible, to theorise the differences between the kind of domination found in state apparatuses and the kind of domination found in, say, the family or the Church. On the other hand, if one conceptualises civil society as subsumed within the state then it *becomes impossible to theorise the process of penetration of civil society by the state*.⁸⁶ Any theoretical advances achieved through the use of an expanded state concept are far outweighed by these two difficulties. The concept hegemony does not overcome these difficulties; if anything it adds to them.

Gramsci is right to focus on the state-civil society couplet, and right to assert its Hegelian heritage. In doing so he advances materialist analysis well beyond Lenin. However, in utilising this couplet in the attempt to theorise the historical changes occurring in capitalist societies it is not an expanded state concept and broadening of the concept of hegemony that is needed. Far more fruitful is an approach that retains the methodological distinction between state and civil society, and rethinks it not through the category 'hegemony', but through the category 'political

administration'. The two fundamental problems with Gramsci's approach just outlined are then overcome. Most importantly it becomes possible to theorise the way in which the state develops administration mechanisms *in response to class struggle; key institutions of civil society become politicised, partially absorbed by the state and thereafter administered*. For this neither an expanded state concept nor the concept of hegemony are needed. What is needed is an expanded concept of the political, which includes administration.

Moreover this argument does not *counterpose* state and civil society to base and superstructure, nor try to weld one to the other. (Political economy is the key to the anatomy of civil society, of which the sphere of needs is but one dimension). Separating state-civil society from base-superstructure in the way Gramsci does - and here his comments that he adopts the former from Hegel and the latter from Marx are revealing - requires a syncretic superimposition of one on the other (unless of course one seeks to jettison one of the models altogether),⁸⁷ a task which the category 'hegemony' is intended to assist in accomplishing. But this leaves a model in which the base becomes a separate sphere requiring separate analysis. This loses an essential aspect of the dialectic of state and civil society as the relationship of the base to the two 'superstructural' levels remains unclear and, ultimately, untheorised.

Moreover, it could be argued that the slippages and oscillations in Gramsci's work allow for later readings in which the distinction between state and civil society is denied (Althusser, Foucault) and hegemony is stripped of its class dimension (Laclau and Mouffe).⁸⁸ The following section takes issue with Althusser's work on the state and ideology, where it is shown that despite his criticisms of Gramsci, Althusser can be seen to follow in his footsteps. This will lead in to the discussion of Foucault's work on power in Part II.

Ideology and State Apparatuses

Although Gramsci develops his expanded concept of the state in order to tackle the historical problems posed by the changing boundaries of the political, one reading of it is that the very distinction between state and civil society has been cancelled.⁸⁹ The invitation to cancel the distinction has been accepted by a number

of writers, such as Althusser and it is taken further by Foucault and his followers. The remainder of this chapter is concerned with the manner in which Althusser's acceptance of the invitation leads to a series of moves that constitute yet further invitations to Foucault. Despite their important political differences, one can trace a number of theoretical affinities between Althusser and Foucault. It is for this reason that Althusser is being dealt with here.

Because our concern is with the state it is on this that our attention shall be focused. However, there are other related affinities. For example, Perry Anderson points out that when in 1962 Lévi-Strauss unloosed the slogan of the decade, 'the ultimate goal of the human sciences is not to constitute man but to dissolve him', the Marxist reply, when it came via Althusser in 1965, was not a repudiation but a counter-signature of the structuralist claim. Rather than engaging with Lévi-Strauss' attacks on history and humanism, Althusser 'endorsed and incorporated them into a Marxism that was now itself reinterpreted as a theoretical anti-humanism'. For Anderson, Althusserianism 'even at the peak of its productivity...was always constituted in an intimate and fatal dependence on a structuralism that both preceded it and would survive it'.⁹⁰ Althusser's decision to develop a version of Marxism which assisted structuralism in abolishing the subject merely enabled Foucault to go one step further and proclaim both the end of man and the obsolescence of Marxism.⁹¹

Althusser suggests, as does Foucault, that the concept of 'civil society' is meaningless for political analysis. Having no place in historical materialism it should be 'struck from Marxist theoretical vocabulary'. In order to sustain this position Althusser must engage in a number of misreadings: reducing civil society to individual economic behaviour, suggesting that the concept both disappears from and is ambiguous in Marx's mature work, and that in Gramsci the concept designates the sphere of economic existence.⁹² These are spurious claims, and it is perhaps significant that Althusser is led to make them in order to jettison the concept. This leads to a number of problems in both Foucault and Althusser. In rejecting the concept civil society Foucault simultaneously rejects the concept of the state, leaving him with an all-embracing concept of power and the social. In comparison, Althusser rejects the civil society concept whilst retaining the state

concept. As a consequence he is forced to expand the concept of the state to include all those institutions of civil society. This is done not in the fashion of Hegel, Marx and Gramsci, in which state and civil society are drawn together yet simultaneously conceptually distinguished, but as part of an altogether different project. In other words, in rejecting the civil society concept any distinction between state and civil society is obliterated. The consequences are enormous. To see why they are we must first identify some of the broader features of Althusser's work.

In order to capture the 'specific effectivity of the superstructures' which he feels has been missing in Marxism, Althusser utilises the notion of a social formation within which there operate a number of distinct practices: economic, political, ideological and theoretical. 'Social practice' involves 'the complex unity of the practices existing in a determinate society'. Each of these practices is relatively autonomous, operating within the complex unity, although ultimately economic practice is determinant.⁹³ The social formation for Althusser is a pre-given complex structured whole.⁹⁴ This is different from the Hegelian concept of a social totality, which Althusser characterises as an expressive totality, where each of the parts expresses the essence of the totality itself.⁹⁵ Instead, Althusser argues that the Marxist totality, as a pre-given complex structured whole containing no essence to be expressed, is a plurality of instances involving a multiplicity of practices which are relatively autonomous, though not independent, since the economic is determinant in the last instance. Althusser attempts to avoid the charge of economism by claiming that although the economic is determinant in the last instance it is not always dominant. Other elements of the social formation can be dominant although this dominance is never stronger than the economic. Thus the whole has the unity of a structure articulated in dominance; the political and ideological are determinant as well as determined. Hence the social formation is 'overdetermined'.⁹⁶ Althusser thus borrows the concepts of overdetermination and determination in the last instance from psychoanalysis and Engels respectively in order to articulate the relationship between the economy and the rest of the social formation. The consequence is a structure of structures. complex, multiform and heterogeneous; that is, overdetermined.⁹⁷

Althusser develops this further by inserting a differential temporality into this complexity. Whereas the Hegelian totality involves a notion of time that is homogeneous and continuous, the structural complexity of the Marxist whole makes it no longer possible

to think the process of the development of the different levels of the whole *in the same historical time*. Each of these different 'levels' does not have the same type of historical existence. On the contrary, we have to assign to each level a *peculiar time*, relatively autonomous and hence relatively independent, even in its dependence, of the 'times' of the other levels.⁹⁸

The economic, the ideological, the political, the scientific etc. all have their own time and history. Althusser is not only utilising Freud's claim that the time of the unconscious cannot be confused with the time of biography as an illustration of the way different historical times are in operation, but also supports his argument with the work of Foucault, claiming that Foucault's 'remarkable' studies in the history of madness and the birth of clinical medicine show the 'distance between the elegant sequences of the official chronicle, in which a discipline of a society merely reflects its good conscience...and the absolutely unexpected temporality that constitutes the essence of the process of constitution and development of those cultural formations'.⁹⁹ The link with Foucault here is unsurprising, since part of Althusser's intention is to break with Hegel and any traces of Hegel in Marxism. But despite his references to the 'whole', Althusser's conceptualisation of differential temporality results in an inability to think of either history or social formations as a totality.¹⁰⁰ One of the effects of this is that it then becomes impossible to think of the transformation of this totality, of one mode of production to another. Given this, any discussion of a historical subject effecting that transformation is immediately ruled out of court. This last point is developed further below.

How then does Althusser theorise the effectivity of the superstructures? Suggesting that the Marxist tradition is strict in its explicit conceptualisation of the state as a repressive apparatus,¹⁰¹ Althusser points to this as the central dimension of Marx and Lenin's work on the state. The state is thus seen as a set of 'state apparatuses': police, courts, prisons, army, government and administration. Such

an analysis remains for Althusser 'descriptive', because it is the first phase of the theory, is a transitional stage in the theory and it gives us the essential point to be developed. Most importantly, this descriptive stage of the theory is a stage which needs to be superseded.¹⁰² Put another way, something needs to be added to the classical definition of the state as an apparatus that is essentially repressive. Marxists recognised this in their practice and yet lacked in their theory.

In their political practice the Marxist classics treated the state as a more complex reality than the definition of it given in the Marxist theory of the state....They recognised this complexity in their practice but did not express it in a corresponding theory.¹⁰³

In order to overcome this lack of theoretical complexity, which he suggests only Gramsci went any way towards, and to advance the theory of the state, Althusser suggests that 'another reality' must be taken into account: the ideological state apparatuses (ISA's). For the elements of the state outlined above, police, courts, army, government and administration, are best understood as the repressive state apparatus (RSA). This is because they ultimately function by violence. By contrast ISA's are 'a certain number of realities which present themselves to the immediate observer in the form of distinct and specialised institutions'.¹⁰⁴ Amongst these are the religious ISA (the system of churches), the educational ISA (public and private schools), the family ISA, the legal ISA, the political ISA (including parties), the Trade Union ISA, the communications ISA (mass media) and the cultural ISA (literature, arts, sports).

Now, in many ways it does not matter precisely which institutions Althusser places within the various ISAs, and as such specific analyses of the ISAs are rendered obsolete,¹⁰⁵ for it is established in advance by Althusser that they secure the reproduction of the conditions of production. The reason for Althusser beginning his essay by pointing to the need for society to reproduce the conditions of production, most notably labour-power, takes on a new significance. Having rejected the category 'civil society' Althusser is left with the 'economic base' and the 'superstructure', and, given that the reproduction of the conditions of production does not take place solely within the 'economic' sphere. Althusser

points to the effectivity of the superstructure in this process of reproduction. In doing so he points to the reality of 'ideology' and 'state'.

Regarding the distinction between the RSA and the ISAs Althusser suggests that

the (Repressive) State Apparatus functions massively and predominantly by *repression* (including physical repression) while functioning secondarily by ideology...In the same way, but inversely, it is essential to say that for their part the Ideological State Apparatuses function massively and predominantly by *ideology*, but they also function secondarily by repression.¹⁰⁶

The functioning of ISAs predominantly by ideology enables Althusser to overcome the accusation that the institutions included in his list are disparate and diverse, for they are unified beneath the ruling ideology, the ideology of the ruling class. The ruling class, as possessors of state power, must of necessity be active in the ISAs. It follows then that the ISAs can be the site as well as the stake of class struggle. The exploited classes find greater occasion and possibility for resistance in the ISAs than against the RSA.

Thus whilst endowing the base with the power of being determinant in the last instance, the 'topographical' metaphor of base and superstructure is for Althusser the descriptive stage of the theory. He develops this with an essentially functionalist argument about the power of the superstructure, the ISAs, in the reproduction of the conditions of production.¹⁰⁷ At the same time his stress on the possibility of class struggle being waged within and over the ISAs is an incorporation not so much of Gramsci's war of position or Kautsky's war of attrition, but of Maoist claims that the proletariat must 'meet head-on every challenge of the bourgeoisie in the ideological field' and must struggle 'to transform education, literature and art and all other parts of the superstructure'.¹⁰⁸ Thus Elliott is correct in claiming that Althusser's work on the ISAs 'is marked by an unresolved tension between functionalism - an automaticity of social *reproduction* via state apparatuses - and voluntarism - a contingency of social *transformation* via the *deus ex machina* of class struggle'.¹⁰⁹ We shall return to this functionalist moment in Althusser's work when we have further examined his work on ideology.

Now, to a large degree Althusser is taking up Gramsci's problematic of the dichotomies of coercion and consent and state and civil society. His conceptualisation of ISAs is heavily dependant on Gramsci, but because Althusser has rejected the concept of civil society he has no recourse other than to declare these institutions to be *of* the state. In this way it might be argued that the ISAs are in fact a crude structuralist appropriation of Gramsci. Moreover, Althusser argues that ideological dominance of the ruling class is achieved through the specific ISAs. The difference between ISAs and the RSA is largely a matter of degree: in ISAs ideology dominates whereas in the RSA force dominates. But this is a far less sophisticated account of the relation between coercion and consent than that offered by Gramsci, for whom hegemony is achieved through a combination of coercion and consent.¹¹⁰

More importantly Althusser's positioning of institutions of civil society within the state, as state institutions, necessarily obliterates any distinction between state and civil society. It is Gramsci's more sophisticated analysis, involving state and civil society and an expanded state concept, that allows him to retain this distinction. Althusser's expansion of the state through ISAs to cover, in Elliott's words, everything from playschools to political parties, opens up the possibility of obliterating the difference between various forms of state. The result is that the differences between a fully corporate state structure where trade unions, political parties and play schools are an arm of the state apparatus, and a state in which trade unions, political parties and play schools operate independently of the state but in accordance with regulations determined by the state, are effectively denied, or at least obscured.¹¹¹ Althusser does not go this far, but the very possibility of such a conclusion being drawn is suggestive of the weakness of trying to conceptualise power in bourgeois society through a functional analysis of ISAs.

This is further illustrated by Althusser's comments regarding political parties. For Althusser, the political ISA includes the different parties, yet it is not at all clear how the political parties could be said to *reproduce* the conditions of production in the way that the educational or family ISA could. What could be claimed is that political parties, however revolutionary they may seem, help sustain political order

by working through and thereby legitimating existing political institutions.¹¹² But this is a far cry from actually reproducing the conditions of production.

Finally there is a question over Althusser's privileging of the educational ISA over all others. The list Althusser gives of ISAs is claimed by him to have a relatively large number of apparatuses in comparison with social formations such as feudalism which contained a smaller number of ISAs and also different types of apparatuses. The church, for example, performed a number of different ideological functions, in the fields of education and culture, which are today performed by several different apparatuses. The church in feudal society was the dominant ISA.¹¹³ It is Althusser's contention that the church as the dominant ISA has been replaced by the school, or the educational ISA. Through the educational apparatus the state has power over the entire population, a captive audience which it educates and indoctrinates with ruling class ideology masquerading as knowledge, and then ejects them into the world as, when and into whatever sphere of work it feels is necessary.

Althusser accepts that the claim that the educational ISA is the dominant one may seem paradoxical given that it seems the political ISA, in particular parliamentary democracy and universal suffrage, is the dominant ISA. But he points out that bourgeois society has survived with political ISAs other than parliamentary democracy and he 'has good reasons'¹¹⁴ for thinking that the primary apparatus now is the educational system. Nonetheless Althusser's relegation of the political ISA is a little perplexing given the historical importance of the development of parliamentary democracy and universal suffrage during the late-nineteenth and early-twentieth centuries. This importance was not lost on Marx or liberal theorists in the nineteenth centuries, as was seen in Chapter One, nor on the theorists of the Second International.

It is undoubtedly the events of May 1968, in which students attacked so fiercely the power relations within the education system, that leads Althusser to argue that the educational ISA was the dominant ISA. This would explain his reference to the 'unprecedentedly deep crisis' which was 'shaking the education system of so many states across the globe'.¹¹⁵ Similarly it could be claimed that Althusser was responding partly to the French education system in particular, which was subject

to far greater control by the state than in other Western countries. However, whether these factors fully explain his contention that the educational ISA is the most dominant is doubtful. The point is not to ascertain which ISA is dominant, but that Althusser's privileging of the educational ISA leads to the omission of any substantial discussion of the political ISA, a discussion which was fundamental to previous Marxist political analysis.

Althusser's attention to the effectivity of the superstructures is also focused on ideology. An account of this concept as it features in Althusser's work will enable us to strengthen some of criticisms of the concept of ISAs above and illustrate the problems posed by a Marxism that seeks to develop theoretically without taking any account of a subject which is both collective and active.

Rejecting The German Ideology as a pre-Marxist text, Althusser argues that ideology has no history; at least ideology in general has no history. Just as for Freud the unconscious has no history and is eternal, so ideology is eternal. Whereas in his earlier essays he argues that ideology is an organic part of every social totality, that all human societies secrete ideology and that even a communist society could not do without ideology,¹¹⁶ in his work on the state Althusser develops his account of ideology to argue that 'ideology interpellates individuals as subjects'. How is this so? First, 'ideology represents the imaginary relation of individuals to their real conditions of existence'. Second, 'ideology has a material existence'. Every ideology always exists in an apparatus and its practice. Hence its materiality; hence the ISAs. Finally, Althusser argues that the function of ideology is to constitute individuals into subjects.¹¹⁷ Each individual with a consciousness and a particular set of behaviour patterns participates in a number of (material) practices which are those of the IA on which sets of ideas depend. So, for example, if an individual believes in God he goes to church; the individual's action is governed by the material IA and the material practices concerned. The materiality is fundamental here:

It therefore appears that the subject acts insofar as he is acted by the following system: ideology existing in a material ideological apparatus, prescribing material practices governed by a material ritual.¹¹⁸

Even more fundamental is that

the category of the subject is constitutive of all ideology but at the same time...the category of the subject is only constitutive of all ideology insofar as all ideology has the function (which defines it) of 'constituting' concrete individuals as subjects.¹¹⁹

Put simply: ideology constitutes individuals as conscious subjects of society. Furthermore 'the interpellation of individuals as subjects presupposes the 'existence' of a Unique and central Other Subject'.¹²⁰ An example of this new Subject in Christian religion is God. God is the Subject, 'he who is through himself and for himself', and his subjects are his 'mirrors', his 'reflections'.

The result of this is that in their subjection subjects work by themselves; they (mis)recognise themselves as free agents. The exception is 'bad subjects' who occasionally provoke the intervention of the RSA. Otherwise subjects work by themselves in practices governed by the ISAs. But the term 'subject' also implies subjection, submission, and therefore the denial of all freedom except that of freely accepted submission.

The individual is interpellated as a (free) subject in order that he shall submit freely to the commandments of the Subject i.e. in order that he shall (freely) accept his subjection....There are no subjects except by and for their subjection.¹²¹

Like Foucault, Althusser recognises that to be a subject is to be subjected. By constituting individuals as subjects and by creating the illusion in them of freedom, ideology secures their subjection to the social order.¹²² Thus individuals not only undergo subjection in the very process of being constituted as subjects, but their constitution as subjects by *ideology* secures their submission to the social order.

There are a number of points that need drawing out from this account to enable the full theoretical and practical implications of Althusser's understanding of ideology to be understood. First, Althusser treats the notion of the subject at the *individual* level. As Hirst notes, Althusser 'rejects the notion of the collective subject found in certain forms of "Hegelian" Marxism. This rejection of the collective/constitutive subject further reinforces the identification of the subject and

the individual'.¹²³ The full consequences of this will be drawn out below. For the moment we can note that the question of the subject which had plagued Western Marxism throughout the twentieth century had always remained a problem of the collective subject. But this was so because of its essentially Hegelian reading of Marx. In seeking to remove all traces of Hegelianism from Marx's own work¹²⁴ Althusser was isolated from any concern with the collective subject whatsoever. In Althusser's work all discussion of the subject is reduced to the level of the individual.¹²⁵

Second, Althusser's conception of the subject involves its decentering. In his essay on 'Freud and Lacan' he argues that

since Marx we have known that the human subject...is not the 'centre of history' - and even...that history has no 'centre' but possesses a structure which has no necessary 'centre' except in ideological misrecognition.¹²⁶

Moreover, Althusser argues that Freud has shown us that in its' decentering the human subject is constituted by a structure which has no 'centre' either. Now, this decentering of the human subject is a result of his conception of individuals as supports of the social structure.

The structure of the relations of production determines the *places* and *functions* occupied and adopted by the agents of production, who are never anything more than the occupants of these places, insofar as they are the 'supports' (Träger) of these functions. The true 'subjects' (in the sense of the constitutive subjects of the process) are therefore not these occupants or functionaries, are not, despite all appearances, the 'obviousness' of the given of naive anthropology, 'concrete individuals', 'real men' - but *the definition and distribution of these places and functions. The true 'subjects' are these definers and distributors: the relations of production* (and political and ideological social relations). But since these are 'relations' they cannot be thought of within the category *subject*.¹²⁷

However, there is a danger that this 'decentering' in fact operates to eliminate the subject altogether. As Balibar puts it,

To designate these individuals [Marx] systematically used the term *Träger*, which is most often translated into English as 'support'. Men do not appear in the theory except in the form of supports for the connexions implied by

the structure, and the forms of their individuality as determinate effects of the structure.¹²⁸

A major problem here is that, as Kate Soper points out, this claim has no support in Marx's own writing. 'It is true that Marx used the word "*Träger*" on occasion. It is also true that he claims that in Capital he treats individuals "only insofar as they are personifications of economic categories, embodiments of particular class-relations and class interests". But this does not imply that individuals are nothing but "personifications" - if anything it points to the limitations of treating them in so abstract a fashion'. If this is so, argues Soper, then Althusser is guilty of a fraudulent reading of Marx.¹²⁹ Indeed, Althusser makes the fundamental error that Marxism criticises: he has taken the phenomenal form as essence and accepted the key arguments of bourgeois political economy and philosophy. As Thompson writes, the notion of human subjects as *träger*, or carriers of functions allocated to them, was at the heart of bourgeois political economy and was intended to convince the working class of precisely this point - that they are powerless carriers of the laws of bourgeois society.¹³⁰

Moreover, because Althusser de-collectivises the subject, he is forced to treat classes as supports of social relations too.¹³¹ Holding implacably to the claim that history is a process without a subject Althusser simultaneously insists that 'class struggle is the motor of history'. But without any concept of the working class as a collective subject, a universal class, the introduction of class struggle appears as yet another *deus ex machina*, a token gesture. Furthermore, given its place as a mere support of social relations there seems little point in the class struggling, and given its passivity one wonders what this struggle would actually consist of. Finally, and here we raise an issue to be dealt with below, what is it struggling for?¹³² The whole point of working class struggle is a refusal to be a mere support of structures, to hail as well as be hailed, to be constitutive as well as constituted, to be an active subject rather than subjected.

In claiming that human beings are only the supports of the structure and that history is a process without a subject Althusser is not simply reformulating the argument that since Marx's early writings are organised around the category 'man' and rely heavily on the understanding of an historical subject they belong to the

realm of ideology rather than science and are not fully Marxist; he is also registering yet another conscious rejoinder to the Hegelian Marxist tradition prevalent in Western Marxism, which retains the notion of the subject.¹³³ The point of course is that the absence is not only of the collective subject, which would necessarily follow from Althusser's reduction of the subject to the level of the individual; it is also the denial that *any subject* can form the subject of history. As such the possibility of any meaningful determination of the whole by active subjects is denied.

The implications of this are crucial. Since the collective subject has been rejected, the subject decentred and removed from any creative role in historical transformation, what is the purpose of any revolutionary transformation of the social order? If 'the freedom of men is not achieved by the complacency of its ideological recognition but by knowledge of the laws of their slavery' and that this has been understood by the 'great' revolutionary materialist thinkers, theoreticians and politicians'¹³⁴ then it would seem that revolutionary transformation of the social order is either unthinkable or practically undesirable. Unthinkable because Althusser has a concept of ideology which is so universal, so necessary, and functions as such a powerful social cement that no space has been left for a theory and practice of ideology which resists and opposes this.¹³⁵ If history is a process without a subject and human subjects are the mere supports of the structure, one wonders where social transformation will actually come from. Undesirable because if freedom is simply knowledge of the laws of mens slavery, if men are condemned to be the eternal supports of the constraining structures, and if, as Althusser argues, communism would be just a change in the mode of production,¹³⁶ one feels inclined to agree with Martin Jay that it is hard to comprehend what a classless society would really achieve.¹³⁷

The key problem with Althusser's work in terms of its use in analysing state power is that conceiving the capitalist state through the categories repression and ideology systematically ignores the importance of the transformation of the state from 1832 onwards (in the British case). Yet it is precisely this transformation that needs to be understood. This cannot be achieved through the repression-ideology couplet. Many of the changes that occurred, that were needed to stabilise and

maintain bourgeois social order, were a result not of 'repression' nor 'ideological' inculcation, but of changes in the performance of the state in capitalist society whereby it no longer functions through direct force or ideological dominance. As such the repression-ideology couplet is incapable of grasping these changes. Moreover, in narrowing the subject down from its collective to individual mode and in conceptualising the working class as passively constituted by state apparatuses Althusser cannot help but obliterate the process of class struggle in these developments. Towards the end of his life Poulantzas grasped the importance of this:

The state...continually adopts material measures which are of positive significance for the popular masses, even though these measures represent so many concessions imposed by the struggle of the subordinate classes. This essential aspect cannot be explained if the relation between state and popular masses is reduced to the couplet repression-ideology.¹³⁸

Althusser's failing is largely a result of his reliance on the concept of ideology to explain the power of the capitalist state in maintaining social order. His attempts to give ideology a material grounding, in the ISAs, is in a sense misleading, for the ISAs play a minor role in his theory of ideology overall; it is the theory of ideology that is meant to have the explanatory power rather than the ISAs. This is illustrated by the way the concept of ideology runs through all Althusser's work whereas the ISAs simply do not. As such the ISAs function as a materialist gloss in an analysis otherwise free from any trace of materialism. Because subjects are constituted in and through their subjection the introduction of ISAs serves merely to give ideology an institutional form; but it is the ideology that remains central. However, given Althusser's obliteration of civil society and the conceptualisation of ideology as the cement in the social order, *the ISAs become coterminous with society*. Althusser develops the concept of ISAs to move beyond the 'repressive hypothesis' present in Marxist analyses of the state, but in doing so conceptualises an array of institutions of civil society as Ideological State Apparatuses, and thus loses the specificity of the political nature of state power. An analogous shift and subsequent loss will be traced in the work of Foucault, though with Foucault it is not the ISAs that perform this function.

Moreover, Althusser's continual references to things 'material' serve the function of rendering everything material, even thought itself. It is not just that the word then loses all discriminatory force¹³⁹ but that *it obscures the lack of an actual materialist analysis of the state*. Likewise in utilising 'ideology' Althusser omits an analysis of precisely the way the state, not ISAs, operates. What is needed is not an all-embracing 'theory of the state' but concrete analyses of particular developments that are sensitive to the theoretical issues involved. The key issue is that the state as the centralised organ of power in bourgeois society administers civil society. Administration, as we shall see, cannot be understood as either ideology or repression. Moreover, with minor modifications 'ideology' can pass over into 'discourse' and 'structural complexity' into 'multi-faceted and fragmented technologies of power', and the road away from a materialist comprehension of power can be almost fully travelled within an approach which fully believes itself to be historical materialism.

Notes to Part I

Abbreviations

SE = K. Marx, Surveys From Exile (Harmondsworth, in association with New Left Review, 1973).

Revs 1848 = K. Marx, The Revolutions of 1848 (Harmondsworth, in association with New Left Review, 1973).

FIA = K. Marx, The First International and After (Harmondsworth, in association with New Left Review, 1974).

EW = K. Marx, Early Writings (Harmondsworth, in association with New Left Review, 1975).

SPN = A. Gramsci, Selections From Prison Notebooks, edited by Q. Hoare (London, Lawrence & Wishart, 1971).

FM = L. Althusser, For Marx (Harmondsworth, Penguin, 1966).

RC = L. Althusser, Reading Capital (London, New Left Books, 1970).

LP = L. Althusser, Lenin and Philosophy and Other Essays (London, New Left Books, 1971).

Introduction

1. The secondary literature on Marx and the state is vast. See for example P. Dunleavy & B. O'Leary, Theories of the State: the Politics of Liberal Democracy (London, MacMillan, 1987) ch.5; A. Gilbert, Marx's Politics: Communists and Citizens (New Jersey, Rutgers University Press, 1981); B. Jessop, The Capitalist State (Oxford, Blackwell, 1982), ch.1 and State Theory: Putting Capitalist States in their Place (Cambridge, Polity, 1990); L. Johnston, Marxism, Class Analysis and Socialist Pluralism: A Theoretical and Political Critique of Marxist Conceptions of Politics (London, Allen and Unwin, 1986), ch.4; R. Miliband, Class Power and State Power (London, Verso, 1983), ch.1 and Marxism and Politics, (Oxford University Press, 1977); C. Pierson, Marxist Theory and Democratic Politics (Cambridge, Polity, 1986), ch.1; J. Urry, The Anatomy of Capitalist Societies: the Economy, Civil Society and the State (London, Macmillan, 1981), ch.6; A. Van den Berg, The Immanent Utopia: From Marxism on the State to the State of Marxism (New Jersey, Princeton University).

2. As Peter Sloterdijk notes in a different context, Hegel hits the nail directly on the head, leaving us to simply stand it on its feet. See P. Sloterdijk, Critique of Cynical Reason (London, Verso, 1988), p.300 Press, 1988). The importance of the 'Marxism in Hegel' is drawn out in R. Jacoby, Dialectic of Defeat: Contours of Western Marxism (Cambridge, Cambridge University Press, 1981), ch.2 and H. Marcuse, Reason and Revolution: Hegel and the Rise of Social Theory (London, Routledge, 1955), for example at p.184.

3. M. Foucault, 'Orders of Discourse'. Social Science Information Vol.10 No.2 (1971).

Chapter One

1. J. Keane, 'Despotism and Democracy', in J. Keane (ed.) Civil Society and the State (London, Verso, 1988). Citizenship is discussed further in Chapter Five below.
2. G.W.F. Hegel, Lectures on the Philosophy of History (New York, Dover, 1956), p.452; G.W.F. Hegel, Lectures on the History of Philosophy Vol.3 (London, Routledge Kegan Paul, 1955), p.385. On Hegel and the French revolution see J. Habermas, Theory and Practice (Boston, Beacon Press, 1973), ch.3; J. Hyppolite, Studies on Marx and Hegel (New York, Harper, 1969) ch.3; M. Riedel, Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy (Cambridge, Cambridge University Press, 1984); J. Ritter, Hegel and the French Revolution: Essays on the Philosophy of Right (Camb MA, MIT 1982).
3. For Hegel and political economy see S. Benhabib, 'The "Logic" of Civil Society: A Reconsideration of Hegel and Marx', Philosophy and Social Criticism, No.3 (1981); R. Plant, 'Hegel and Political Economy', New Left Review, 103 (1977).
4. See Riedel op.cit.
5. K. Marx, 'On the Jewish Question' in EW p.233. It is significant that, as it is inherited from Hegel, the issue partly revolves around the categories *Bürger* and *citoyen*. Although in German the citizen is the *Bürger* and the origins of citizenship tied to the emergence of a *Bürgertum* (bourgeoisie), thereby giving Bürger a semantic field that includes private members of civil society as well as citizens of the state, it is significant that when Hegel begins to develop the distinction between state and civil society, in his lectures on natural law (1817-18), he resorts to the French *citoyen* and *bourgeois*. Thus in civil society the *Bürger* is a bourgeois but not a citizen. See J. Van Horn Melton, 'The Emergence of "Society" in Eighteenth- and Nineteenth-Century Germany' in Language, History and Class, edited by P.J. Corfield (Oxford, Blackwell, 1991), p.149 and B. Turner, 'Contemporary Problems in the Theory of Citizenship' in Citizenship and Social Theory, edited by B. Turner (London, Sage, 1993). Marx of course takes up precisely this dichotomy and seeks to overcome it.
6. 'Critique of Hegel's Doctrine of the State' in EW p.90; see also The German Ideology ed. C.J. Arthur (London, Lawrence Wishart, 1970) p.57.
7. G.W.F. Hegel, PhR paras. 267, 273 & 276. I am working with the H.B. Nisbet translation. The translation by T.M. Knox Hegel's Philosophy of Right (Oxford, Oxford University Press, 1952) renders *der politische Staat* as 'political state' at para.267 but as 'the state as a political entity' at 273 and 276, but see Knox's useful discussion in his editors note to para.267. See also Z. Pelczynski, 'The Hegelian Conception of the State' in Hegel's Political Philosophy: Problems and Perspectives, edited by Z. Pelczynski (Cambridge, Cambridge University Press, 1971), p.13-14.

8. See PhR para.255.
9. Para.183, emphasis in original.
10. See for example para. 189; Pelczynski op.cit. p.12; S. Benhabib, Critique, Norm and Utopia: A Study of the Foundations of Critical Theory (New York, Columbia University Press, 1986), p.96.
11. Para.236.
12. See paras. 236, 239-48. In 'On the Jewish Question' Marx notes that '*Security* is the supreme concept of civil society, the concept of *police*, the concept that the whole of society is there to guarantee each of its members the conservation of his person, his rights and property... The concept of security does not enable civil society to rise above its egoism. On the contrary, security is the *guarantee* of its egoism', in EW p.230.
13. Para.252.
14. Para. 253; see also 301.
15. Para.274.
16. Paras. 249 & 256, emphasis in original.
17. A. Arato, 'Reconstructing Hegel's Theory of Civil Society' in Hegel and Legal Theory, edited by D. Cornell, M. Rosenfield & D.G. Carlson (London, Routledge, 1991), p.310; J. Cohen & A. Arato, Civil Society and Political Theory (Camb.MA, MIT, 1992), p.109.
18. PhR para.303, emphasis in original.
19. Para. 302, emphasis in original.
20. Para. 301; see Cohen & Arato op.cit; C. Taylor, Hegel (Cambridge, Cambridge University Press, 1975), p.444. Marx calls the Estates the deputation of civil society to the state.
21. Marx, 'Critique of Hegel's Doctrine of the State' EW, p.131, emphasis in original.
22. Ibid. p.141.
23. See PhR paras. 290 - 297; see also his 'The English Reform Bill' in Hegel's Political Writings (Oxford, Oxford University Press, 1964).
24. 'The Eighteenth Brumaire of Louis Bonaparte' SE p.186.
25. First Draft of 'The Civil War in France' FIA p.246-7.

26. Riedel, Between Tradition and Revolution, op.cit. p.151.
27. See for example para. 205.
28. Para. 297; see also Cohen & Arato op.cit. p.103; Arato op.cit. p.309.
29. Para.292.
30. See 'Critique of Hegel's Doctrine of the State' EW p.106-8. It is significant however that when Marx analyses the French state using a more complex conceptualisation of classes he considers the bureaucracy a *caste* rather than a *class*.
31. PhR. para.243.
32. S. Avineri, Hegel's Theory of the Modern State (Cambridge University Press, 1972), p.96 n.40; see also J. Cohen, Class and Civil Society: The Limits of Marxian Critical Theory (Amherst, University of Massachussetts Press, 1982), p.55 & 238.n.6 & 9; Pelczynski op.cit. p.14 n.37; J. Rundell, Origins of Modernity: The Origins of Social Theory from Kant to Hegel to Marx (Cambridge, Polity, 1987), p.54.
33. PhR para.207.
34. Para. 238. It should be noted that whilst it may appear that the working class are part of civil society by virtue of their membership of the industrial estate this is not in fact the case. At para.252 Hegel distinguishes between *Gewerbsmann* (which can be translated as either Corporation member [Knox] or tradesman [Nisbet]) and day-labourers, a distinction consolidated by Hegel's description of the former as 'masters', hardly a description of working class day-labourers. For a discussion see B. Cullen, Hegel's Social and Political Thought: An Introduction (Dublin, Gill and Macmillan, 1979), ch.6. Hegel is presumably influenced here by previous writers - see for example the comment on Kant in note 39 below.
35. See Cohen & Arato op.cit p.103; Cohen op.cit. p.56; Arato op.cit. p.308.
36. PhR para 244; Hegel comments on the necessity for poverty in his lectures of 1819-20, quoted by Wood in his editor's notes to the Philosophy of Right op.cit. p.453. The one 'solution' that Hegel does propose is colonialism and imperialism. See paras. 245-248. Here he pre-empts Bukharin and Lenin in the suggestion that the state turns outwards and develops its external relations in the effort to solve its internal problems. See Chapter Two below. All three fail to envisage the state developing the necessary internal structures of political administration to mediate these antagonisms.
37. T.E. Wartenberg, 'Poverty and Class Structure in Hegel's Theory of Civil Society', Philosophy and Social Criticism, Vol.18 No.2 (1981), p.178.

38. 'A Contribution to the Critique of Critique of Hegel's Philosophy of Right. Introduction' in EW p.256; The German Ideology op.cit. p.94.

39. Here Hegel and Marx reveal their rootedness in previous political thought, where it is also common to find the working class considered as outside of civil society - see for example the discussion of John Locke in C.B. Macpherson, The Political Theory of Possessive Individualism (Oxford University Press, 1962), p.227 & 248. Likewise see Kant's comments on the necessity for a citizen to his own master (as well as adult and male), a necessity which excludes those whose labour is made use of by others, in 'On the Common Saying: "This May be True in Theory, but it does not Apply in Practice"' in I. Kant, Political Writings (Cambridge, Cambridge University Press, 1991), p.78. For Marx's failure in following Hegel here see Cohen op.cit. p.61 and Rundell op.cit. p.90-91. Later writers will also make the same error. In Chapter Two it will be shown how Lenin continues in this fashion ('labour aristocracy' notwithstanding). And although British 'right-Hegelians' undoubtedly went some way to encouraging the incorporation of the working class (see Chapter Five below), they also continue in the same fashion: T.H. Green for example suggest that wage-labourers may as well be deprived of rights of property altogether - Principles of Political Obligation (Cambridge, Cambridge University Press, 1986), Section 220.

40. In his essay 'Society' Adorno describes the working class as being half outside society, in Critical Theory and Society: A Reader, edited by E. Bronner & D.M. Kellner (London, Routledge, 1989), p.274.

41. 'The Class Struggles in France: 1848 - 1850' SE p.43.

42. 'The Chartists' SE p.265.

43. 'The Class Struggles in France' SE p.45.

44. Capital, Vol 1 (Harmondsworth, Penguin in association with New Left Review, 1976) p.395

45. 'The Class Struggles in France' SE p.57, my emphasis.

46. This is not to overlook completely Marx's debt to Feuerbach. For example, the conception of alienation in Marx's work on the state prior to 1844 functions in a highly Feuerbachian manner, Marx responding to Hegel's suggestion that we should 'venerate the state as an earthly divinity' (para.272 - the Knox translation has it as 'secular deity') with an application of Feuerbach's critique of religion to political alienation. See 'On the Jewish Question' EW p.220.

47. Cohen op.cit. p.37.

48. He notes that the essential feature of bourgeois society is wage-labour, and the essential feature of wage-labour is absolute poverty. Grundrisse (Harmondsworth, Penguin in association with New Left Review, 1973); see also 'Critique of the Gotha Programme' in FIA p.351-2

49. 'Economic and Philosophical Manuscripts' EW.
50. Rundell op.cit. p.93.
51. 'Economic and Philosophical Manuscripts' EW p.385-386. On Marx, Hegel and labour see C. J. Arthur, Dialectics of Labour: Marx and his Relation to Hegel (Oxford, Blackwell, 1986); Benhabib, op.cit.
52. 'Economic and Philosophical Manuscripts' EW p.386-392; also The German Ideology op.cit. p.60-1. For a more thorough discussion see Arthur ibid. For Marx on alienation more generally see I. Meszaros, Marx's Theory of Alienation (London, Merlin, 1970) and B. Ollman, Alienation: Marx's Conception of Man in Capitalist Society (Cambridge, Cambridge University Press, 1971).
53. See 'Economic and Philosophical Manuscripts' EW p.322-334.
54. Cohen op.cit. p.37; see also Arthur op.cit. p.1, but also generally.
55. Rundell op.cit. p.88-9.
56. 'A Contribution to the Critique of Hegel's Philosophy of Right. Introduction. EW p.250-51.
57. See G.W.F. Hegel, Science of Logic (London, Allen & Unwin, 1969), p.107; Marx, 'Economic and Philosophical Manuscripts of 1844' in EW, p.393; C.J. Arthur, Dialectics of Labour op.cit. p.54.
58. 'Critique of Hegel's Doctrine' EW p.73.
59. Ibid. p.111.
60. See the first page of The Communist Manifesto.
61. Contribution to a Critique of Political Economy (London, Lawrence & Wishart, 1970), p.20; also The German Ideology op.cit p.42.
62. Notorious because it has been taken as the definitive statement of historical materialism yet is decidedly non-marxist, most notably in the absence of any reference to classes or their struggles, as G. Sorel has noted in his Preface to the First French Edition of The Illusions of Progress (Berkeley California, University of California Press, 1969). For a discussion of the possible reasons for this see A.M. Printz, 'Background and Ulterior Motive of Marx's "Preface" of 1859', Journal of the History of Ideas, 30 (1969).
63. A. Gouldner, The Two Marxisms (London, Macmillan, 1980), p.359.
64. As in Althusser for example - see Reading Capital (London, New Left Books, 1970), p.162 and For Marx (Harmondsworth, Penguin, 1966), p.110. Reducing Hegel's civil society to the market is a common misinterpretation. See, as examples, Avineri op.cit: 'what Hegel would call civil society is nothing else than

the market mechanism' (p.12), and his discussion on p.141-154; K. Kumar, 'Civil Society: An Inquiry into the Usefulness of an Historical Term'. British Journal of Sociology Vol.44 No.3 (1993), p.378-9; E. Meiksins Wood, The Pristine Culture of Capitalism: An Essay on Old Regimes and Modern States (London, Verso, 1991), p.88; N. Poulantzas, Political Power and Social Classes (London, Verso, 1973) p.124.

65. This raises issues central to the development of Marxism in the twentieth century. Whilst the critique of political economy may function as an immanent critique of civil society it is the growth of state administration which makes the critique of political economy insufficient. This makes the necessity to address other spheres even more crucial, Here we are concerned with the nature of the political, but a similar argument applies to, say, the sphere of culture. This is said to be the basis of the 'split' between 'Western Marxism' and Marxism-Leninism, orthodox and unorthodox Marxism, warm and cold currents of thought. See A. Arato, 'Political Sociology and Critique of Politics' in The Essential Frankfurt School Reader, edited by A. Arato & E. Gebhardt (Oxford, Blackwell, 1978), p.23; S. Benhabib, Critique, Norm and Utopia op.cit. p.159; R. Jacoby Dialectic of Defeat op.cit.

66. It will be argued in part three that the family is equally a category of political administration.

67. G. Hunt, 'The Development of the Concept of Civil Society in Marx' in Karl Marx's Social and Political Thought: Critical Assessments Vol.IV, edited by B. Jessop & C. Malcolm-Brown (London, Routledge, 1990).

68. Ibid. p.34 n.30. The relevant sections are in Marx FIA p.246-7 cf. p.208 & 210.

69. Ibid. p.34 n.31. The specific examples are p.133 & p.141 of the Moscow edition compared to p.231 & p.240 of the Penguin. In the latter case one finds 'civil society' then 'bourgeois society' respectively. The same 'problem' is found in other works, such as the first page of the Grundrisse.

70. See C.J. Arthur, 'Introduction' to The German Ideology op.cit. p.5.

71. See for example A Contribution to the Critique of Political Economy Appendix 'Introduction' op.cit. p.188.

72. Hunt op.cit p.30.

73. G. Therborn, Science, Class and Society (London, Verso, 1980), p.210.

74. See for example T. Bottomore, Political Sociology (London, Hutchinson, 1979). Introduction; A. Gouldner, The Coming Crisis of Western Sociology (London, Heineman, 1971), p.92.

75. As we have seen this development was not entirely a product of conceptual distinctions. It was heavily rooted in the revolution in France, the nature of which

appeared to be 'social', which gave rise to the ever more powerful social force of the bourgeoisie. This social nature of the revolution distinguished it from the politico-legal and religious revolution in England in the seventeenth century. See Therborn op.cit. p.212-3; this is criticised in A. Gouldner, The Two Marxisms op.cit. p.374-379.

76. S. Avineri, The Social and Political Thought of Karl Marx (Cambridge University Press, 1968) for example suggests that Marx's critique of Hegel's Philosophy of Right 'applies Feuerbach's general critique of Hegelian philosophy to politics using Feuerbachian language and developing his materialism from this' p.10-12.

77. See the first 'Thesis' on Feuerbach and the 'Economic and Philosophic Manuscripts' in EW p.349; S. Clarke, Marx, Marginalism and Modern Sociology: From Adam Smith to Max Weber (London, MacMillan, 1982 second edition 1991), p.57-8. K-H. Ilting, 'Hegel's Concept of the State and Marx's Early Critique' in The State and Civil Society: Studies in Hegel's Political Philosophy, edited by Z. A. Pelczynski (Cambridge, Cambridge University Press, 1984), claims that Marx spends too much time on Hegel's logic and is too Feuerbachian, thereby missing the possibility of a political critique. Whilst there is an element of truth in this it relies too heavily on distinguishing Marx's 'Feuerbachianism' from his 'politics'. In fact large elements of Marx's critique of Hegel are decidedly political as opposed to Feuerbachian, as the argument here shows.

78. M. Weber, '"Objectivity" in Social Science and Social Policy' in The Methodology of the Social Sciences (New York, Free Press, 1949), p. 68.

79. To take just one field in sociology, a number of writers have sought to investigate 'the body and society': B. Turner, The Body and Society: Explorations in Social Theory (Oxford, Blackwell, 1984); P. Brown, The Body and Society: Men, Women and Sexual Renunciation in Early Christianity (London, Faber, 1988); A. Synott, The Body Social: Symbolism, Self and Society (London, Routledge, 1993) In Turner's case the concept 'society' appears interchangeable with 'the social' and serves as a general agency responding to needs which appear somehow pre-social. What needs to be registered here is that in the context of the sociology of the body the work of writers such as Turner, influenced as it is by Foucault, is open to the same criticisms as we will make of Foucault - that in seeking to analyse the links between daily practices concerning the body on the one hand and the exercise of power on the other all the 'practices of power' get reduced to a continuum in which they serve the same function. When this problem is put to him in an interview Turner appears to vacillate, suggesting, in the fashion of Baudrillard, that perhaps the idea of 'society' is becoming increasingly redundant. See 'Conclusion. Theory and Epistemology of the Body' in Regulating Bodies: Essays in Medical Sociology (London, Routledge, 1992), p.229-260.

Other sociologists are also aware of this problem with 'society' and seek to overcome it in various ways. Giddens for example seeks to use instead the categories 'nation-state' 'intersocietal system' and 'time-space' edges. See The Nation-State and Violence: Volume Two of a Contemporary Critique of Historical

Materialism (Los Angeles, University of California, 1985), p.21, 172; The Constitution of Society (Cambridge, Polity, 1986) Intro., p.163-69, 244; The Consequences of Modernity (Cambridge, Polity, 1990), p.12. Likewise Bauman suggests that a sociological theory of postmodernity ought to replace the category 'society' with that of sociality. Z. Bauman, Intimations of Postmodernity (London, Routledge, 1992), p.190. Finally Wallerstein seeks to replace it with 'historical system'. I. Wallerstein, 'World-Systems Analysis' in A. Giddens & J.H. Turner (eds.) Social Theory Today (Cambridge, Polity, 1987), p.309-324. I am not convinced that any of these are successful; all seem to lose what is argued here to be the fundamental distinction of state and civil society as categories of analysis, with the social as a critical concept. Wallerstein for example admits that replacing 'society' with 'historical system' is a mere semantic substitution, but rids us of the need to link 'society' to 'state' (p.317). Likewise Giddens confusingly suggests that civil society refers for the most part to the countryside and that with the rise of the modern nation-state 'civil society' in this sense disappears, largely through the administrative reach of the state. See The Nation-State and Violence, p.21.

80. Two points need to be made here. On the one hand it is true to say that many Marxists have worked with a state-economy dichotomy which either overlooks social dimensions or dissolves them into state or economy. This has had a dire effect on some important work within Marxism. For example, in Althusser's work key aspects of society are conceptualised as state apparatuses, as will be shown in chapter two. Likewise the work of those in the state-derivation debate emphasises a 'capital-theoretical' approach, but this work tends to reduce all social life to either 'economy' or 'state' and any conception of the 'social' is lost. In their 'Introduction' to the key collection of essays in this debate John Holloway and Sol Picciotto criticise Nicos Poulantzas for failing to focus on the relation between political forms and the 'anatomy' of civil society, namely political economy. But in his 1859 Preface Marx does not say this. He argues that legal and political relations and political forms originate within 'civil society' and that the anatomy of civil society must be sought in political economy, that is, the state must be related to civil society which in turn must be studied through political economy. Marx is therefore working with a concept of the state and civil society rather than state and economy. J. Holloway & S. Picciotto (eds.) State and Capital: A Marxist Debate (London, Edward Arnold, 1978), p.3-4 see also Urry, The Anatomy of Capitalist States op.cit p.84.

On the other hand, whilst it may be true to say that sociology has responded to this kind of approach by examining the civil society it considers Marxism to have forgotten (Gouldner, The Two Marxisms op.cit. p.370; Kumar op.cit. p.380) this has often resulted in the nonchalant expansion and use of 'society' or 'the social', as discussed above, or it has resulted in attempts to force Marxism and sociology together. For example B. Turner suggests that in the absence of a theory of social relations per se, the analysis of civil society functions as a sociology inside Marxism. See 'Contemporary Problems in the Theory of Citizenship' in Citizenship and Social Theory, edited by B. Turner, op.cit. p.16 note 4.

81. This point has been touched upon by a number of writers in the Western Marxist tradition. For example, both Gramsci notes the lack of a critical dimension in sociology - see SPN p.243-4 and his critique of Bukharin p.419-473. The conservative nature of sociology is drawn out by F. Hearn, Reason and Freedom in Sociological Thought (London, Allen & Unwin, 1985), ch.2. and A. Gouldner, The Coming Crisis of Western Sociology op.cit. p.12-14, 442. Gouldner suggests that the way to overcome this is for younger sociologists to change their practice, a 'solution' at odds with my argument here. Also in this context see A. Swingewood, Marx and Modern Social Theory (London, Macmillan, 1979), ch.9; T. Bottomore, Sociology as Social Criticism (London, Allen and Unwin, 1974), ch.5 and Sociology and Socialism (Brighton, Wheatsheaf, 1984), ch.3.

82. See Chapter Three, below, where, besides considering the work of Foucault, I also consider the way some have sought to utilise his work by developing the idea of 'the social' and 'administration' whilst jettisoning the state-civil society couplet (Donzelot, Rose) or by simply dissolving the political into the social (Laclau and Mouffe).

83. See Marx's discussion of the demand for a unified science of *man*, in the 1844 Manuscripts; EW p.355.

84. 'On the Jewish Question' EW p.235, emphasis in original.

85. 'The Civil War in France' FIA p.210.

86. Ibid. p.206.

87. Ibid. p.210-1.

88. First Draft of 'The Civil War in France' FIA p.250.

89. Grundrisse op.cit. p.157; Capital Vol.1 p.163-77. As Benhabib notes, the use of the term *Gemeinschaftlich* is meant as a contrast to *bürgerliche Gesellschaft*, that is, a contrast between solidarity and togetherness with the individuality of exchange relations and juridical norms - Critique, Norm and Utopia op.cit. p.121.

90. Grundrisse p.162, 488, 832; Capital, Vol.1 op.cit. p.171, 929-30.

91. See the 'Critique of Hegel's Doctrine of the State' EW p.191.

92. Ibid. p.112, emphasis added.

93. 'Critique of Hegel's Philosophy of Right. Introduction'. EW p.255.

94. Ibid. p.254.

95. Ibid. p.256.

96. The Communist Manifesto in Revs 1848 p.77; likewise he suggests that the lower middle class, small manufacturers, shopkeepers, artisans and peasants all fight against the bourgeoisie to save their own existence. This perspective also informs other of his comments. For example he castigates the German bourgeoisie for sinking to the level of a social estate and therefore being unable to speak for the whole of society - article in the *Neue Rheinische Zeitung* in MECW 8 p.162.

97. The German Ideology op.cit. p.83; see I. Meszaros, Philosophy, Ideology and Social Science: Essays in Affirmation and Negation (Brighton, Wheatsheaf, 1986), p.209; K. Tester, The Life and Times of Post-Modernity (London, Routledge, 1993), p.43. For Marx's proletariat as myth see D. Lovell, Marx's Proletariat: The Making of a Myth (London, Routledge, 1988), esp. ch. 2 and L.P. Wessell, Prometheus Bound: The Mythic Structure of Karl Marx's Scientific Thinking (Louisiana State University Press, 1984), ch.4; Benhabib also makes a similar criticism Critique, Norm and Utopia op.cit. p.115, 130-31.

98. Of course there are major problems here with Marx's assumption that there will be no particular interests within the universal class which would require a new political mediating mechanism. For a discussion see Cohen op.cit. ch. 2. Likewise the idea of the closing off of state and civil society has been heavily criticised, some writers describing it as a 'soteriological myth' - see L. Kolakowski 'The Myth of Human Self-Identity' in The Socialist Idea: A Reappraisal, edited by L. Kolakowski & S. Hampshire (London, Weidenfield & Nicholson, 1974).

99. Benhabib discusses the socialisation of the universal and the universalisation of the political. Critique Norm and Utopia op.cit. p.39; the phrase 'socialised freedom' is taken from E. Bloch, On Karl Marx (New York, Herder and Herder, 1971), p.49; for the socialisation of the political and the politicisation of the social see P. Osborne, 'Radicalism Without Limit? Discourse, Democracy and the Politics of Identity' in Socialism and the Limits of Liberalism, edited by P. Osborne (London, Verso, 1991).

100. For a discussion of the differences between the materialism of Marx and Feuerbach in relation to the philosophy of the subject see Jacoby, Dialectic of Defeat op.cit. p.56 and Benhabib, Critique, Norm and Utopia op.cit. p.55 & p.123-132.

101. See 'On the Jewish Question', 'Critical Notes on "The King of Prussia and Social Reform"' in EW, 'The Civil War in France' FIA.

102. 'Critical Notes on "The King of Prussia and Social Reform"' EW p.411 emphasis in original. On the next page he talks of the states impotence in a passage that is a far cry from claims concerning the states omnipotence that we noted earlier.

103. The German Ideology op.cit. p.53.

104. 'Critique of Hegel's Doctrine of the State' op.cit. p.191, emphases in original.

105. MECW Vol.4 (London, Lawrence & Wishart, 1975) p.666. In 1865 Marx writes to Kugelman that in England the International is creating quite a stir on the suffrage question, and comments that this question has quite a different significance in England than Prussia. Letter to Kugelman 23 Feb 1865 in FIA. More generally, at times he points to the necessity of examining the character of elections, which depends not on the name but on the economic foundation or the economic situation of the voters, a necessity which is intended ultimately to lose the political character of elections; 'Conspectus of Bakunin's Statism and Anarchy' FIA p.336.
106. On 'conquering political power' see 'The Communist Manifesto' in Revs 1848, the 'Inaugural Address of the International Working Men's Association' FIA p.80 and in On Britain (Moscow, Foreign Languages Publishing House, 1962) p.491; the 'Provisional Rules' FIA p.82; 'The Chartists' in SE, p.264 and in On Britain op.cit. p.361; 'The Class Struggles in France' p.71.
107. L. Colletti, 'Introduction' to EW p.44; for a discussion of Marx on the vote see R.N. Berki, 'Perspectives in the Marxian Critique of Hegel's Political Philosophy' in Hegel's Political Philosophy, edited by Z. Pelczynski, op.cit. p.213.
108. 'Critique of Hegel's Doctrine of the State' EW p.111.
109. 'The Civil War in France' FIA p.210-211.
110. There is however an essential difference between the theorisation of universal suffrage in the early works and how it functions in the Paris Commune. In his critique of Hegel universal suffrage is the demand for the dissolution of the distinction between civil and political existence, whereas in the Paris Commune universal suffrage follows from the destruction of the state. Nonetheless, in both cases Marx clearly sees universal suffrage in terms of the role it could play in breaking down the distinction between civil society and the state, or private life and political expression.
111. See Hegel, PhR paras. 301-303; see also the 'Proceedings of the Estates Assembly in the Kingdom of Wurtemberg, 1815-1816' in Hegel's Political Writings op.cit. p.253 & 262; see also Taylor, Hegel op.cit. p.445 and also Wood's note to PhR para.301, p.469.
112. See J.S. Mill's 'Representative Government' and 'Thoughts on Parliamentary Reform'. For discussions see A.S. Kahan, Aristocratic Liberalism: The Social and Political Thought of Jacob Burckhardt, John Stuart Mill, and Alexis de Tocqueville (Oxford University Press, 1992); C.B. Macpherson, The Life and Times of Liberal Democracy (Oxford, Oxford University Press, 1977); J. Roper, Democracy and It's Critics: Anglo-American Democratic Thought in the Nineteenth Century (London, Unwin Hyman, 1989).
113. The Holy Family (Moscow, Foreign Languages Publishing House, 1956) p.156-7.
114. 'On the Jewish Question' in EW p.229.

115. The Holy Family op.cit. p.152.

116. 'Critique of the Gotha Programme' FIA p.346-7.

117. E. Bloch, On Karl Marx op.cit. p.49-50. J. Bernstein points to the teleology in Marx's consideration of rights in 'Right, Revolution and Community: Marx's 'On the Jewish Question' in Socialism and the Limits of Liberalism, edited by P. Osborne op.cit. See also Meszaros, Philosophy, Ideology and Social Science op.cit. ch.5; J. Waldron (ed) Nonsense Upon Stilts: Burke, Bentham and Marx on the Rights of Man (London, Methuen, 1987), p.119-136. Here we can see how as a *materialist* concept 'rights' functions like all materialist concepts: as an accusation and an imperative; see H. Marcuse, 'The Concept of Essence' in Negations (Harmondsworth, Penguin, 1968), p.86.

Chapter Two

1. G. Lukacs, Lenin: A Study On the Unity of His Thought (London, New Left Books, 1970), p.60-1.
2. A.J. Polan, Lenin and the End of Politics (London, Methuen, 1984), p.10; also R. Miliband, 'The State and Revolution' in his Class Power and State Power (London, Verso, 1983).
3. Lenin, 'The State and Revolution' in Selected Works in Two Volumes, Volume II, (London, Lawrence and Wishart, 1947), p.144.
4. Ibid. p.144.
5. He points out that the only change Marx and Engels made to The Communist Manifesto, in the Preface to the German edition of 1872, was based on their experience of the Commune.
6. Ibid. p.165.
7. Ibid. p.178.
8. This explains Lenin's emphasis on the Commune in the text. Lenin is drawing a continuity between the Commune and the 1905 and February 1917 revolutions in Russia, claiming that the forthcoming socialist revolution and state would, as the dictatorship of the proletariat, be a continuation of the Commune. This is partly due to the need to distance himself, and Marxism, from anarchist slogans concerning the 'smashing' of the state, and partly due to the obligation, imposed by Engels, of identifying the Commune as the dictatorship of the proletariat. Thus Lenin is trying to reconcile Commune, state, transitional state and dictatorship of the proletariat. This difficulty is increased with the re-emergence of the Soviets in 1917, convincing Lenin that these were the revolutionary form of proletarian power. See P. Anderson, Considerations on Western Marxism (London, New Left Books, 1976), p.116 Yet at the same time he wishes to argue that the state must be smashed and that it withers away; he even suggests that the state should be reconstructed (see 'State and Revolution' p.171, 173 & 222). Harding suggests that a large part of the problem is a semantic one - see Lenin's Political Thought Vol.II: Theory and Practice in the Socialist Revolution (London, Macmillan, 1981). p.134-140. Whilst there is undoubtedly a semantic dimension to the problems here the point is surely that the confusion results from an undeveloped analysis of the state and, it must be said, of the social and political order of communist society. Hence Lenin's attempts to look back towards the Commune to see the Soviets as its continuation, and to see any difference between the Russian state and the bourgeois state as 'progress'.
9. M. Liebman, Leninism Under Lenin (London, Merlin, 1975). p.191-222; see also L. Colletti, 'Lenin's State and Revolution' in From Rousseau to Lenin: Studies in Ideology and Society (New York & London, Monthly Review, 1972) and R.

Miliband, 'Class Struggle From Above' in Social Theory and Social Criticism, edited by W. Outhwaite & M. Mulvey (Oxford, Blackwell, 1987), p.180.

10. 'State and Revolution' op.cit. p.156.

11. Ibid. p.157, emphasis in original.

12. Ibid. p.171-3.

13. Ibid. p.153.

14. The classic revisionist text is E. Bernstein, Die Voraussetzungen des Sozialismus (1899) trans. as Evolutionary Socialism: A Criticism and Affirmation (trans. E. Harvey) (London, Independent Labour Party, 1909). The standard English edition has been the one edited by S. Hook (New York, Schocken Books, 1961). These two editions omitted between a quarter and a third of the original, in particular a chapter on Hegel. This is now available in E. Bernstein, The Preconditions of Socialism ed. and trans. by H. Tudor (Cambridge, Cambridge University Press, 1993), an edition in which the extent of Bernstein's revision is made even clearer, given his comments on the 'pitfalls' of the Hegelian dialectic. Bernstein's revision developed slowly through the 1890s. This development, and related essays, can be traced in the collection of essays Marxism and Social Democracy: The Revisionist Debate 1896-1898 ed. and trans. by H. Tudor & J.M. Tudor (Cambridge, Cambridge University Press, 1988). See especially Bernstein's essays 'The Social and Political Significance of Space and Number' and 'The Struggle of Social Democracy and the Social Revolution I & II'. For discussions see the works listed in note 20 below. The best account still remains C. Schorske, German Social Democracy: The Development of the Great Schism (Cambridge Massachusetts, Harvard, 1955). Also useful are G. Craig, Germany 1866-1945 (Oxford, Oxford University Press, 1981); H. Grebing, History of the German Labour Movement: A Survey (Leamington Spa, Berg Publishers, 1985); S. Miller & H. Potthoff, A History of German Social Democracy: From 1848 to the Present (Leamington Spa, Berg Publishers, 1986).

15. M. Salvadori, Karl Kautsky and the Socialist Revolution 1880-1938 (London, Verso, second edition 1990), p.14, 38.

16. K. Kautsky, Selected Political Writings ed. P. Goode (London, Macmillan, 1983), p.30-1.

17. Lenin, 'State and Revolution' op.cit. p.145.

18. Ibid. p.155, 213, 214.

19. Kautsky, The Dictatorship of the Proletariat (Michigan, Ann Arbor Paperback, 1964), p.84-5.

20. Kautsky ibid. p.68. Of course a year later Lenin will accuse Kautsky of being a renegade for his criticisms of the revolution and after - see 'The Proletarian

Revolution and the Renegade Kautsky' in Selected Works in Two Volumes Vol.II - accusing him of misunderstanding the nature of the revolution, apostasy, succumbing to a liberal position, subserviency to the bourgeoisie, servility to the Kulaks and Menshivism as well as Opportunism. The same accusations can be found in Trotsky's Terrorism and Communism (1920). Both Lenin and Trotsky argue that Kautsky himself had supported the concept of a dictatorship of the proletariat, the necessity for a class state and for a full workers democracy. But far from being a renegade Kautsky was in fact largely consistent. As Salvadori notes, compelled to confront both Kautsky's 'revolutionary' past and his present position as an implacable opponent of the October revolution and Bolshevik tactics they sought to 'fracture' the continuity of his work - see Karl Kautsky and the Socialist Revolution op.cit. p.252. Kautsky's concept of the dictatorship of the proletariat, class state and workers democracy were always different to the conceptions Lenin held in 1917 and therefore bound to result in criticisms of October and after. Kautsky's criticisms in 1918 were not apostasy at all, but consistency. Unfortunately Lenin and Trotsky had to accuse him of being a renegade precisely because they had in the past agreed with him on so many issues. On Kautsky's relations with the Russian Marxists see M. Donald, Marxism and Revolution: Karl Kautsky and the Russian Marxists 1900-1924 (New Haven and London, Yale University Press, 1993). On the theoretical disputes in the Second International generally see B. Hindess, Parliamentary Democracy and Socialist Politics (London, Routledge, 1983), ch.1; R. Miliband, Marxism and Politics (Oxford, Oxford University Press, 1977); C. Pierson, Marxist Theory and Democratic Politics (Cambridge, Polity, 1986), chs.2 & 3; A. van den Berg The Immanent Utopia: From Marxism on the State to the State of Marxism (New Jersey, Princeton University Press, 1988), ch.2.

21. R. Luxemburg, 'The Russian Revolution' in Rosa Luxemburg Speaks ed. M-A. Waters (New York & London, Pathfinder Press, 1970), p.387.

22. Ibid. p.393. On the relationship between Luxemburg and Kautsky see Salvadori chs.5-7.

23. Polan op.cit. p.155.

24. G. Therborn, 'The Rule of Capital and the Rise of Democracy', New Left Review 103 (1977), p.3-43; see also his 'The Right to Vote and the Four Routes To/Through Modernity' in State Theory and State History, edited by R. Torstendahl (London, Sage, 1992).

25. See especially 'The Boycott' (1906), but also 'Should We Boycott the State Duma?', 'The Dissolution of the Duma and the Tasks of the Proletariat' and 'Against the Boycott' all in Selected Works in Twelve Volumes Vol.3 (London, Lawrence & Wishart, 1936).

26. See '"Left-Wing Communism" an Infantile Disorder' ch.7.

27. N. Bukharin, 'Towards a Theory of the Imperialist State' in his Selected Writings on the State and the Transition to Socialism (London, Spokesman, 1982), p.25, 31.

28. 'State and Revolution' op.cit. p.147. See also Harding, Lenin's Political Thought op.cit. p.92-109; S.F. Cohen, Bukharin and the Bolshevik Revolution: A Political Biography 1888-1938 (New York, Vintage, 1975), p.39-43; M Sawyer, 'The Genesis of "State and Revolution"' in The Socialist Register (1977), p.213-8. Also see Lenin's 'Introduction' to Bukharin's Imperialism and World Economy (London, Merlin, 1987). Of course, the issue of imperialism was of concern to many other key figures, not least Luxemburg and Pannekoek, yet in terms of developing an analysis of the state in capitalist society it was Gramsci who breaks with the focus on imperialism, as is shown below.

29. Harding p.116-8.

30. Bukharin, 'Towards a Theory of the Imperialist State' op.cit. p.31.

31. Lenin, 'The Proletarian Revolution and the Renegade Kautsky' op.cit. p.383.

32. See 'Imperialism, The Highest Stage of Capitalism'. The role the 'labour aristocracy' plays in Marxist conceptualisations of the working class is critically assessed in Chapter Four, below.

33. The phrase 'microscopic universe' is Polan's. Although in his notebooks Lenin emphasises Marx's 'Eighteenth Brumaire' in terms of its analysis of the state, suggesting that 'the "state machine" is a bureaucratic-military machine in the majority of capitalist states (now in 1917 it is possible to say in all)' (quoted in Sawyer, 'The Genesis of "State and Revolution"' op.cit. p.217) this point is never developed in any real sense.

34. SPN p.243-4. Gramsci is also critical of sociology's 'vulgar evolutionism'.

35. W. Adamson, Hegemony and Revolution: A Study of Antonio Gramsci's Political and Cultural Theory (Los Angeles & London, University of California Press, 1980), p.164.

36. M. Salvadori, 'Gramsci and the PCI: Two Conceptions of Hegemony' in Gramsci and Marxist Theory, edited by C. Mouffe (London, Routledge, 1979), p.252; also see Togliatti, On Gramsci and Other Writings (London, Lawrence and Wishart, 1979), chs.7 & 8.

37. Political Writings 1910-20 (London, Lawrence and Wishart, 1977), p.83, 262.

38. Ibid. p.262.

39. 'The Italian State' in A. Gramsci, Pre-Prison Writings ed. R. Bellamy (Cambridge, Cambridge University Press, 1994), p.141-45. Also see his comparison of the English, German and Italian states in 'Three Principles and Three Kinds of

Political Order' in the same volume. Also see C. Buci-Glucksmann, Gramsci and the State (London, Lawrence and Wishart, 1980), p.147. The issue of individual nation-states and their 'peculiarities' will become crucial in Chapter Four below, where we consider the 'peculiarities' of the English, an argument leaning heavily on a neo-Gramscian reading.

40. Political Writings 1910-20 op.cit. p.191.

41. R. Bocoock, Hegemony (London, Tavistock, 1986), p.25; P. Anderson, 'The Antinomies of Antonio Gramsci', New Left Review, 100 (1976-77), p.19-21.

42. Quoted in Buci-Glucksmann op.cit. p.177.

43. Lenin's 'Two Tactics' is the key text here. However, Bobbio argues that in fact Lenin does not use the term, and that this is a problem of translation. Nonetheless, the issue of leadership is crucial for Lenin as for Plekhanov, and Gramsci's intended meaning seems clear.

44. A. Davidson, The Theory and Practice of Italian Communism (London, Merlin, 1982), p.97; also M. Clark, Antonio Gramsci and the Revolution That Failed (New Haven and London, Yale University Press, 1977).

45. Political Writings 1921-26 (London, Lawrence and Wishart, 1978), p.408-9.

46. SPN p.238.

47. On war of position and Kautsky see Anderson p.59-63.

48. SPN p.221; see also p.243.

49. Ibid. p.235.

50. Ibid. p.243-4; see also p.79.

51. On Gramsci's extension of 'hegemony' see Buci-Glucksmann, Gramsci and the State op.cit. ch.8; also see Adamson, Hegemony and Revolution op.cit. p.170-5; Anderson, 'The Antinomies' op.cit. p.21-7; J.F. Femia, Gramsci's Political Thought: Hegemony, Consciousness and the Revolutionary Process (Oxford, Clarendon Press, 1987), p.25; J. Hoffman, The Gramscian Challenge: Coercion and Consent in Marxist Political Theory (Oxford, Blackwell, 1984), p.55; C. Mouffe, 'Hegemony and Ideology in Gramsci' in Gramsci and Marxist Theory, edited by C. Mouffe op.cit. p.178-9.

52. SPN p.160.

53. SPN p.263.

54. SPN. p.239.

55. SPN p.244. For a discussion of the integral state see Buci-Glucksmann p.91-110. For Gramsci's Hegelianism, and its Italian form, see R. Bellamy, Modern Italian Social Theory: Ideology and Politics From Pareto to the Present (Cambridge, Polity, 1987); R. Bellamy, 'Gramsci, Croce and the Italian Political Tradition', History of Political Thought Vol.11 No.2 (1990); R. Bellamy & D. Schecter, Gramsci and the Italian State (Manchester, Manchester University Press, 1993); N. Bobbio, 'Gramsci and the Concept of Civil Society' in Civil Society and the State, edited by J. Keane (London, Verso, 1988), also in Gramsci and Marxist Theory, edited by C. Mouffe op.cit. and in his own Which Socialism? (Cambridge, Polity, 1986); P. Piccone, Italian Marxism (Los Angeles & London, University of California Press, 1983); D. Schecter, 'Gramsci, Gentile and the Theory of the Ethical State in Italy', History of Political Thought Vol.11 No.3 (1990).

56. SPN p.12.

57. See for example SPN p.52.

58. Anderson p.17. Anderson accuses Gramsci of oscillation and conceptual slippage. This not only fails to pay sufficient attention to the context or chronology of his argument (see Bellamy and Schecter, Gramsci and the Italian State op.cit. p.120) but also obscures the important theoretical point that Gramsci is working with two concepts of the state and hegemony, in the manner of Hegel, as I am here attempting to show. In an interesting discussion Adamson (Hegemony and Revolution op.cit. p.216-7) suggests that this can only be understood through the category of intellectuals and Gramsci's ideas on political education.

59. Bobbio 'Gramsci and the Concept of Civil Society' op.cit. p.83-4. However, Bobbio goes too far in suggesting that Gramsci was reversing the Marxist primacy of structure over superstructure; see Adamson p.218.

60. And the kind of economism found in liberalism and Italian theorists. See Buci-Glucksmann ch.12 and A. Showstack Sassoon, Gramsci's Politics (London, Croom Helm, 1980), p.180-193.

61. SPN p.408.

62. SPN p.158-68; See also Adamson ch.7; C. Boggs, Gramsci's Marxism (London, Pluto Press, 1976), p.106 & 116. This places Gramsci firmly in the tradition of Western Marxism's concern for the insufficiency of the critique of political economy, as noted in Chapter One above. Typical of Gramsci's focus here is his suggestion that 1917 represents a 'Revolution Against Capital'. Gramsci's critique of economism also shows the Italian influence on his thought, an influence that can be traced back to Machiavelli: 'what Machiavelli does is to bring everything back to politics' (SPN p.249).

63. SPN p.259.

64. See Bobbio op.cit. p.84-5.

65. SPN p.170; although this is claimed to have its roots in Machiavelli, there is a strong sense of the Hegelian recognition here.

66. Anderson op.cit. p.25.

67. SPN p.12.

68. Mouffe 'Introduction' to Mouffe (ed.) op.cit. p.10-11; see also her essay 'Hegemony and Ideology in Gramsci' in the same volume p.187. The same (mis)reading of hegemony as concentrated in civil society can be found in a large number of commentators - see for example C. Pierson, Marxist Theory and Democratic Politics op.cit. p.89; B. Jessop, The Capitalist State (Oxford, Blackwell, 1982), p.148-9 and State Theory: Putting Capitalist States in Their Place (Cambridge, Polity, 1990), p.51; J.G. Merquior, Western Marxism (London, Paladin, 1986), p.101.

69. SPN p.246.

70. SPN p.263.

71. SPN p.12.

72. SPN p.80.

73. SPN p.271, 80.

74. Buci-Glucksman p.93; Showstack Sassoon p.111-14.

75. For a discussion of this aspect of Gramsci's work see Hoffman, The Gramscian Challenge op.cit.

76. Hoffman ibid. p.60.

77. E. Laclau and C. Mouffe, Hegemony and Socialist Strategy: Towards a Radical Democratic Politics (London, Verso, 1985), p.136-38. This is consolidated in Laclau and Mouffe's dissolution of the political into the social, following Foucault, a point developed in Chapter Three, below.

78. Buci-Glucksman p.70.

79. Ibid. p.49, 63.

80. Buci-Glucksman p.70.

81. Adamson p.175, 178.

82. SPN p.266-7.

83. SPN p.195; for a discussion see M. Cain, 'Gramsci, The State and the Place of

Law' in Legality, Ideology and the State, edited by D. Sugarman (London, Academic Press, 1983).

84. This point will be developed in Chapters Three and Five below, where a critique of Foucault's concept of law and its relation to administration will be central (Chapter Three) and an attempt is made to develop a stronger account of the relationship between law and administration (Chapter Five).

85. SPN p.160.

86. See Cain op.cit. p.101.

87. G. Hunt, 'Gramsci, Civil Society and Bureaucracy' in Praxis International Vol.6 No.2 (1986) describes the state-civil society couplet as part of the 'standard conceptual apparatus of unthinking 'Marxism'' p.210.

88. These points are developed further below. For an argument pertaining to the ambivalence in Gramsci's work, inviting a liberal reading, see Hunt ibid.

89. Anderson, 'The Antinomies of Antonio Gramsci' op.cit. p.36.

90. P. Anderson, In the Tracks of Historical Materialism (London, Verso, 1983), p.38.

91. See The Order of Things p.261; this point is developed in Chapter Three, below.

92. See Chapter One, above. Compare FM p.110: 'the concept of 'civil society' disappears from Marx's work' with RC p.162: 'the concept 'civil society' as found in Marx's mature writings...is ambiguous'.

93. FM p.113, 167; RC p.58. ~

94. FM p.193.

95. FM p.203; RC p.94.

96. FM p.209.

97. A. Callinicos, Is There A Future For Marxism? (London, Macmillan, 1982), p.60; G. Elliott, Althusser: The Detour of Theory (London, Verso, 1987), p.153-4.

98. RC p.99, emphasis in original.

99. RC p.103.

100. See P. Osborne, 'Modernity is a Qualitative, Not a Chronological Category', New Left Review, 192 (1992), p.81-3; also Elliott p.156-8.

101. LP p.131. Althusser refers to the 'Eighteenth Brumaire', The Communist Manifesto, all Marx's later writings and Lenin's 'State and Revolution'.

102. LP p.133.

103. LP p.135-6.

104. LP p.136.

105. Callinicos op.cit. p.75.

106. LP p.138.

107. T. Benton, The Rise and Fall of Structural Marxism: Althusser and his Influence (London, Macmillan, 1984), p.99-103; Elliott op.cit. p.225.

108. Decision of the Central Committee of the Chinese Communist Party Concerning the Great Proletarian Cultural Revolution, quoted in Benton ibid. p.97-8.

109. Elliott op.cit. p.225.

110. Benton op.cit. p.101.

111. See Benton p.103, Elliott. p.233, Anderson, 'Antinomies' op.cit.

112. If this is so then, as Benton points out, it is difficult to see what could justify Althusser remaining within the Communist Party of France (PCF) (p.103). See also P. Anderson, Considerations on Western Marxism op.cit. p.39 and S. Khilnani, Arguing Revolution: The Intellectual Left in Postwar France (New Haven & London, Yale University Press, 1993), p.87. Khilnani makes the interesting point that the 'Ideology and ISAs' text was intended to identify the Party as the unique agent of political change. This has a bearing on my comments below regarding the subject of history, but for the moment we might want to suggest that some sense might be made of Althusser's comments here if one distinguishes between parties and The Party, the latter playing a fundamentally different role to the former.

However, years later in a 'Note on the ISAs' in which he rejects the charge of functionalism, Althusser denies he ever identified political parties, including revolutionary ones, as ISAs. He writes that 'I have never written that a political party is an ideological state apparatus. I have even said something quite different (if only briefly I admit), namely that the political parties are only 'components' of a specific ideological state apparatus: of the political ideological state apparatus, which realises the political ideology of the ruling class, so to speak in its 'constitutional regime' (quoted in Elliott p.235n).

113. LP p.144.

114. LP p.145.

115. LP p.149.

116. LP p.232.
117. LP p.153-9.
118. LP p.159.
119. LP p.160.
120. LP p.167.
121. LP p.169.
122. See Callinicos op.cit. p.66 and Elliott op.cit. p.229.
123. P. Hirst, On Law and Ideology (London, Macmillan 1979), p.60.
124. As is well known he came to regard only the 'Critique of the Gotha Programme' and the marginal Notes on Wagner as free from any traces.
125. It is precisely this move that leads his followers to deny the existence of the working class altogether - see Hirst op.cit. p.57. Likewise there are undoubtedly links with 'Post-Marxist' rejections of classism in this.
126. LP p.201; also RC p.253.
127. RC p.180.
128. RC p.252.
129. K. Soper, Humanism and Anti-Humanism (London, Hutchinson, 1986), p.104-6.
130. E.P. Thompson, The Poverty of Theory and Other Essays (London, Merlin, 1978), p.147-8.
131. RC p.233, 267.
132. Thompson op.cit. p.103-7; Elliott op.cit. p.169.
133. See M. Jay, Marxism and Totality: The Adventures of a Concept from Lukacs to Habermas (Cambridge, Polity, 1984), ch.13.
134. LP p.219.
135. Benton op.cit. p.105; Elliott op.cit. p.232.
136. Quoted in Elliott op.cit. p.181.
137. See Jay op.cit. p.411; see also Elliott op.cit. p.181, Soper op.cit. p.106. In similar fashion we can provisionally note that one of Foucault's problems is that

if we are condemned to be subjected to power, if resisting one set of power relations will only result in a new set, why bother resisting?

138. N. Poulantzas, State, Power, Socialism (London, Verso, 1980) p.31.

139. T. Eagleton, Ideology (London, Verso, 1991), p.149.

Part II: Power

Introduction

Foucault describes the objective of his work as the creation of ‘a history of the different modes by which, in our culture, human beings are made subjects’, and describes three modes through which this occurs: the modes of enquiry having the status of sciences; the practices of division (sick/healthy, mad/sane etc); the mechanisms through which human beings turn themselves into subjects, for example by considering themselves as sexual subjects.¹

Whilst he uses this to claim that his writings have been about the subject rather than power, his work is pre-eminently about the way the subject and power interact; more precisely, how power operates on and through the subject, how the subject is constituted as a subject by power. For this purpose the word *assujettissement* captures the meaning of the individual as ‘subjectified’ in relation to forms of knowledge and discourse, ‘subjected’ in technologies of domination, and ‘subjectifies’ him/herself in relation to rules of conduct.² It is in pointing to the constituted nature of the subject, and the subjected nature of subjectivity, that Foucault considerably advances our understanding of power, for three reasons. First, he points to the way order is maintained through relations of power and structured through power mechanisms; second, he places administration at the heart of the constitution of this order; third, he indicates the manner in which the subject is constructed as part of this order. This is useful because it advances our understanding of the way the constitution of the body as labour power can only take place within a network of power relations and therefore in a system of subjection.³

Likewise in developing his account Foucault points to the changes in the mechanisms of power in particular historical periods. Although in general his concern is with the broad period from the late-eighteenth century onwards, when being more specific Foucault suggests that the period he is concerned with is identical to that which concerns us here, when changes in state administration made necessary a rethinking of the state-civil society couplet. For example, he variously points to the way detention came to occupy almost the whole field of possible punishments in 1810, to cellular internment which was laid down in principle in 1844, to three books on prison reform published in 1838, and to the replacement

of the chain gang with the police carriage (a 'mobile Panopticon') in 1837. Foucault opts for the date 22 January 1840 as the date of completion of the carceral system, but the choice of such a specific date is a stylistic curlicue, the point being that the transformation was most pronounced from the 1840s.⁴ He also recognises that developments thereafter are not merely concerned with the franchise and rights, economic and political reform, but also with areas he feels had traditionally been ignored - health, sexuality, criminality, madness, welfare, statistics: crucially, those aspects of life subject to administration. Thus Foucault's positive contribution points to the networks of administrative power mechanisms that operate in the ordering of capitalist society.

However, the major contention in this chapter will be that these insights are seriously weakened by Foucault's rejection of the state concept and, alongside this, the conceptual distinction between state and civil society. Instead of state and civil society, Foucault's analysis rests on power and the social. It will be argued that his insights into the centrality of administration to the mechanisms through which order is constituted and maintained are weakened because his concept of administration operates without any account of its role *vis a vis* the state-civil society relation. This weakness is exacerbated by Foucault's difficulties concerning law, for although he is highly sensitive to the problems posed for the concept of law by the growth in administration, he avoids conceptualising this, resulting in a fundamental ambiguity concerning the place of law in his analysis. The reason for this can be traced back to his rejection of the state-civil society distinction. Essentially, it will be argued that in Foucault's work there is a process whereby concepts fundamental to political analysis undergo a dual series of dissolutions: state is dissolved into power and thence into the 'social body'; law is dissolved into norm and thence into administration.

On the other hand, Foucault follows much contemporary social and political thought in individualising the subject, as we saw in the case of Althusser. There is no concept of a collective subject in Foucault's work. I make this point here for two reasons. One of the concerns in Part III will be to show how working class individuals were constituted as citizens, and how the working class was constituted as a class, a dual process intended to incorporate the working class into civil

society and the state; this will be done in order to show the constitutive power of the state in bourgeois society. Foucault fails to recognise the central role of the *state* in the constitution of subjects, and fails to address the question of *collective* subjects. Moreover, in his concern to show how subjects are constituted by power he fails to recognise the extent to which subjects are equally constitutive of that power. In Part III I will be concerned to show not only that the working class was constituted by the state, but that the state was equally constituted by the working class, through struggle.

It is for this reason that this chapter ends with a critique of Foucault's concept of resistance. For the argument seeks to shed new light on a number of tensions that are now generally held to be Foucault's 'weak spots': notably, his 'ethical quandary'; the problem as to why one should resist. The accusation of nihilism and despair and the crypto-normativism that is said to be hidden in Foucault's work will be given a different reading on the grounds of the arguments developed concerning the category of the social. This will centre on his account of resistance, where it will be argued that Foucault's account is a weak alternative to the materialist use of the category of struggle, a weakness which partly derives from his inability to develop an account of critical knowledge.

Chapter Three

Foucault and the Question of Power

Foucault's Contribution to the Critique of Political Theory

Where precisely does Foucault stand on the question of the state? There is no agreement amongst commentators on this issue. On the one hand Foucault is accused of ignoring and devaluing the general importance and specific form of the state, whilst on the other hand he is said to theorise the key role of the state.¹ Such differing interpretations are a product of the ambiguity of Foucault's work regarding the state. The contention here is that this ambiguity exists because Foucault's research into the nature of modern power leads him to reject the state-civil society distinction rather than rethink it.

Questioned on 'the theoretical opposition between the state and civil society' Foucault rejects its significance on the grounds that it is neither 'very fruitful' nor 'pertinent'.² In a later interview, he points out that the opposition between state and civil society developed in the late-eighteenth century and assisted liberal economists in limiting the state's sphere of action, but adds that he is not convinced that the opposition is still operational. It served a historical purpose for theorists and now only serves to afflict the notion of 'state' with a pejorative connotation whilst idealising 'society' as a good, living, warm whole.³

What Foucault does find useful in the category 'civil society' however, is the fact that, for him, it occupies a central space in the attempts by early liberals to consider the technology of government, for what it makes possible is a social government:

Civil society is the concrete ensemble within which these abstract points, economic men, need to be positioned in order to be made adequately manageable.⁴

Thus

Rather than embrace the distinction between state and civil society as an historical and political universal...one can attempt to see a form of

schematization proper to the particular technology of government.⁵

Now, there are two features that are worth indicating at this point. The first is the absence in Foucault's discussions of the Hegelian and Marxist heritage of the category 'civil society'. This absence will become more significant in Foucault's discussions of administration and police. Second, what Foucault is indicating here is the realm of the social. This category will come to play a prominent part in Foucault's work, and that of his followers. The provisional point to be made here is that for Foucault 'civil society' is useful not in its own right, but as an indicator of a new sphere, to be designated 'the social'.

But if civil society is to be displaced by the social, what of the state? There are occasions in Foucault's work on power where the state is seen as occupying a fundamental place. In Discipline and Punish, for example, he suggests that the replacing of the scaffold with a new technique of punishment which symbolized a different physics of power created an enclosed, complex, hierarchized structure 'that was integrated into the very body of the state apparatus'.⁶ Likewise in The History of Sexuality he notes that the growth of the discourse on sexuality helped develop a 'medical...project for organising a state management of marriages, births and life-expectancies' and that the issue of degenerescence throughout the discourse on sexuality took the form of a 'state-directed racism'.⁷

Yet at other times Foucault claims that his work is not about the state, and that it is simply wrong to focus on it. This is spelled out quite clearly in his published interviews and lectures.

The idea that the state must, as the source or point of confluence of power, be invoked to account for all the apparatuses in which power is organised, does not seem to me to be fruitful for history, or one might rather say that its fruitfulness has been exhausted.⁸

Similarly he claims that the state is overvalued, an overvaluation which regards the state as a unity and thereby attaches an importance to it as an object of both theory and practice. He even suggests that the state may be a mythical abstraction.⁹

To these two positions we can add a third, for at times Foucault's ambiguity is present in his very formulation of the problem. When asked about the relationship

between discipline and the state Foucault replies

I don't want to say that the state isn't important; what I want to say is that relations of power, and hence the analysis that must be made of them, necessarily extend beyond the limits of the state. In two senses: first of all because the state, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations, and further because the state can only operate on the basis of other, already existing power relations. The state is superstructural in relation to a whole series of networks that invest the body, sexuality, the family, kinship, knowledge, technology and so forth.¹⁰

So the state is important but, despite its 'omnipotence', does not occupy the whole field of power relations; it is superstructural to these power relations. Hence analysis must be directed away from the state.

The ambiguity here seems to be over three different formulations regarding the state in Foucault's work. These can be delineated as the central significance of the state, the denial of any significance of the state, the recognition of some importance (unspecified) but a methodological shift away from it. The first position is undoubtedly not Foucault's; the second often appears to be his position but is best read as part of his polemical attempt to distance himself from those who stress the state; the third formulation seems the one to which Foucault adheres most consistently. This is significant because it is this position that has the ambiguity built into it ('I don't want to say the state isn't important'), and because it also involves the methodological shift that is the basis of Foucault's difficulties concerning state power. Foucault's weaknesses in developing a political analysis of the state in the late-nineteenth and early twentieth centuries all stem from this shift.

In many ways these last comments alert us to what is in fact a replication of some of Marx's key methodological moves. When Foucault claims that the state can only exist on the basis of other already existing power relations, and that the state is therefore superstructural to these other power relations, there are echoes of Marx's critique of Hegel and one of the central claims of historical materialism.¹¹ Likewise his methodological shift away from the state as the centre of analysis to these other power relations could be read as analogous to the shift to the critique

of political economy found in Marx - witness his comment that 'the disciplines provide, at the base, a guarantee of the submission of forces and bodies. The real corporeal disciplines constituted the foundation of the formal, juridical liberties'.¹² For this reason when Foucault reflects on his own work his identification of his own 'guiding principle' can be read as analogous to Marx's identification of his 'guiding thread' in the 1859 Preface.¹³ Moreover, Foucault points to the way the formal equality of law and 'representative regimes' serves to conceal the actual procedures of power. However, the nature of the other powers that Foucault seeks to examine is fundamentally different to those that concern Marx, for rather than develop a critique of political economy Foucault seeks to examine the disciplinary mechanisms that operate throughout the whole social body. Moreover, whereas Marx's shift leads him to retain the state-civil society distinction in a new form, Foucault's leads him to reject it.

Foucault seeks to address the nature of these 'other power relations', the 'micro-physics of power', by contrasting the mode of punishment based on torture and execution and that based on a meticulous regimenting of the minutest details of a prisoners life. Conceptualising power as a micro-physics presupposes that power is not a property, something that a class or group may hold, but a strategy; power is not appropriated but functions in tactics, manoeuvres, techniques, it is exercised rather than possessed, an exercise met with resistance. Finally such power is not focused on one point but has innumerable points of confrontation and struggles.

This means that these relations go right down into the depths of society, that they are not localised in the relations between the state and its citizens or on the frontier between classes and that they do not merely reproduce...the general form of law or government.¹⁴

In this sense the sub-title of the English edition of Discipline and Punish is misleading, for the work is not simply about the 'birth of the prison'. Rather the prison is to be used as a methodological tool for an analysis of the power structures and relations of modern society. For Foucault, power relations are constituted largely through a set of institutions and disciplinary apparatuses. Honneth has suggested that Foucault's choice of the prison betrays his prejudice from the outset,

for he has chosen to represent the life of developed societies according to the model of total institutions.¹⁵ Whilst this is true, and leads to some deleterious consequences in Foucault's understanding of law, administration and the social body, as we shall see below, it is also a partial distortion of Foucault's method. For Foucault's reading of power does not arise purely from the prison; indeed his reading of the prison does not arise purely from the prison. Foucault focuses on the prison in order to illustrate the technique of punishment. Thus the focus is not on punishment as such, nor the reason for it, but on its techniques, through which the similarities between incarceration and other non-penal practices can be drawn out.¹⁶ Thus Foucault frequently makes the claim that power 'is exercised on those punished - and, in a more general way, on those one supervises, trains and corrects, over madmen, children at home and at school, the colonized, over those who are stuck at a machine and supervised for the rest of their lives'.¹⁷ This enables him to develop far wider theses concerning the effects of power relations. Moreover, if there is one institution that Foucault uses as his model it is the military rather than the prison. He argues that politics sought to implement the mechanism of the perfect army, the disciplined mass, the docile useful troop, attaining thereby the control of bodies and forces.¹⁸

The prison is therefore read as epitomising the power relations of modern society; as one of the chief institutional mechanisms of discipline it illustrates most profoundly the disciplinary processes at work. The juxtaposition of the public torture and execution of Damiens and the regulated timetable of anonymous prisoners enables Foucault to draw out some differences in the regimes of power in which these differing punishments operate. The crime in the classical age was a crime against the sovereign; by attacking the law the criminal attacks the will of the sovereign. The punishment of the crime was not therefore the intervention of the king as an arbiter between two adversaries but a direct reply to the criminal and a re-establishment and reiteration of the sovereign's power.

The public execution, then, has a juridico-political function. It is a ceremonial by which a momentarily injured sovereignty is reconstituted. It restores that sovereignty by manifesting it at its most spectacular...Its aim is not so much to re-establish a balance as to bring into play, as its extreme point, the dissymmetry between the subject who has dared to violate the law

and the all-powerful sovereign who displays his strength.¹⁹

The execution was above all else an expression and reassertion of power. It was a political operation.²⁰ The characteristics of such punishment exhibit the characteristics of a particular form of power. Such a form of power exerted itself directly on bodies, manifested itself visibly, was directly associated with force, violence and war, was linked to 'personal' bonds making disobedience a disloyalty. Most significantly, it exhibited these traits because of an absence of continual supervision.²¹

By 'continual supervision' Foucault has in mind the sort of power strategies and techniques that develop in the modern period. The concern in the Constituent Assembly in 1790 over the 'irregular' nature of power and justice - there was a plethora of overlapping and conflicting authorities, many in private hands - led to calls for an improvement in the economy of power, in order to ensure its better distribution; it would be homogeneous, operating everywhere, in a continuous way and down to the finest grain of the social body. Thus there was

the emergence of a new strategy for the exercise of the power to punish...with its primary objectives: to make of the punishment and repression of illegalities a regular function, coextensive with society; not to punish less but to punish better; to punish with an attenuated severity perhaps, but in order to punish with more universality and necessity; to insert the power to punish more deeply into the social body.²²

It was, in other words, a new way of administering illegalities.²³ At the heart of this, though not occupying the whole space, is the prison. Thus 'the scaffold...was replaced by a great enclosed, complex and hierarchized structure... A quite different materiality, a quite different physics of power'.²⁴ Foucault uses the model of the panopticon, an architectural device developed by Bentham to ensure the most effective surveillance in institutions such as the prison, to illustrate the regularised nature of modern power. Individualised prisoners are located in a specific space; they are seen but the 'eye' that sees them is unseen by them. Force is no longer necessary as efficient control is achieved across the surface of the application of power. The panopticon is, as Bentham noted, applicable to all establishments in which a number of persons are to be kept under inspection - schoolchildren,

patients, the insane, workers, beggars.²⁵ Here the category 'surveillance' of *Surveiller et Punir* becomes important, intended as it is to capture a diverse range of related meanings: 'inspect', 'supervise', 'observe'.²⁶

Given that for Foucault the panoptic schema represents a new physics of power, and is spread throughout the social body, its importance cannot be overestimated. It represents the 'ideal type' of a form of power completely opposed to that of sovereignty and the king's body. Power is no longer concentrated but dispersed; no longer at the apex of a hierarchy but spread throughout the whole lower region; not localised in the body of the king but expressed relationally on irregular bodies in the social whole. Discipline has replaced sovereignty.²⁷

Foucault regards the displacement of sovereignty by discipline and surveillance as the key historical transformation.

The movement from one project to another...rests on a *historical transformation*: the gradual extension of the mechanisms of discipline throughout the whole social body, the formation of what might be called in general the disciplinary society.²⁸

Thus Foucault's thesis rests on the understanding that there was a key historical transformation which introduced a new network of power relations throughout the social body, creating a carceral system, a carceral archipelago.²⁹ Such networks of power operate on the body, producing a knowledge of the individual, normalising behaviour through these power-knowledge mechanisms. The judges of normality are everywhere, both inside and outside of the disciplinary institutions.

We are in the society of the teacher-judge, the doctor-judge, the 'social worker'-judge; it is on them that the universal reign of the normative is based; each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements. The carceral network, in its compact or disseminated forms, with its systems of insertion, distribution, surveillance, observation, has been the greatest support, in modern society, of normalizing power.³⁰

Likewise in Volume One of *The History of Sexuality* Foucault points to the way the transformation to this type of power led to the creation of 'sexuality', through the 'deployment of sexuality', in turn leading to its administration. In the last 150

years society has developed a machine of power and knowledge that produces discourses concerning sexuality. In other words, sexuality is inextricably bound up with modern devices of power. Foucault seeks to illustrate this through the concept 'bio-power', with its double focus: on the body as a machine, and thereby its disciplining and integration into systems of control; and on the population, the species body, and thereby the administration of births, deaths, health, life expectancy. Thus 'the old power of death that symbolized sovereign power was now carefully supplanted by the administration of bodies and the calculated management of life'. Foucault reiterates that this operated through institutions - schools, barracks, workshops - and with a number of tactical focuses - health, housing and so on. As in Discipline and Punish this involves a shift in focus away from law to what Foucault calls norm. The normalizing society is the historical outcome of a technology of power centred on life. A micro-power designed to normalise.³¹

It is with his shift to the analysis of power, to its material effects from, roughly, 1970, that Foucault regards himself as contributing to the critique of political theory. This is not to downplay his earlier work; it is, rather, to identify his concern from 1970 as the conscious attempt to tackle the question of power head on.³² For Foucault regards this conceptualisation of power as a radical break with traditional political theory, a break in theory adequate to the actual changes that have occurred in the organisation of power. His concern with the techniques of power, with power in its micro-physics and at the capillaries of the social body, forms the basis of a concerted effort to totally transform the analysis of power.³³

Foucault seeks to end the domination of what he calls the 'juridico-discursive' conception of power, defined in the following way:

In the case of the classic, juridical theory, power is taken to be a right, which one is able to possess like a commodity, and which one can in consequence transfer or alienate, either wholly or partially, through a legal act or through some act that establishes a right, such as takes place through cession or contract... This theoretical construct is essentially based on the idea that the constitution of political power obeys the model of a legal transaction involving a contractual type of exchange.³⁴

He suggest that this conception is common to a number of competing analyses,

most notably liberal and Marxist, adding that in the 'general' Marxist conception power is usually taken to have an economic function, maintaining the relations of production and class domination.

At issue here is what Foucault considers to be the sovereign-subject relationship, and in particular the displacement of the category 'sovereignty' into the concept 'state sovereignty'. Foucault considers 'sovereignty' an obsolete concept. Put simplistically, an analysis that depends upon the sovereign-subject relationship conceives of power as regulated through law; law emanates from the sovereign; the subjects, in obeying the law, are therefore obedient to the sovereign. The consequence of this is that power is perceived as concentrated in the sovereign. But the ambiguity over the state already identified is reflected in his ambiguity over the precise meaning of 'sovereignty'. On the one hand Foucault appears to equate sovereignty with monarchy.

Political theory has never ceased to be obsessed with the person of the sovereign. Such theories still continue today to busy themselves with the problem of sovereignty. What we need, however, is a political philosophy that isn't erected around the problem of sovereignty, nor therefore around the problem of law and prohibition. We need to cut off the king's head: in political theory that has still to be done.³⁵

On the other hand he appears to regard any theoretical focus on the state, regardless of the type of state, as a continuation of the 'obsession' political theory has had with sovereignty. Hence 'to pose the problem [of political power] in terms of the state means to continue posing it in terms of sovereign and sovereignty, that is to say in terms of law'.³⁶ This becomes even clearer in the following passage:

I would say that we should direct our researches on the nature of power not towards the juridical edifice of sovereignty, the state apparatuses and the ideologies which accompany them... We must escape from the limited field of juridical sovereignty and state institutions.³⁷

In this way Foucault's shift of focus away from the sovereign is equally a shift away from the state. His central claim is that we need a political philosophy which is no longer erected around the problem of the state as the locus of a sovereign power.³⁸ Why does Foucault believe that this is the case? The key lies in his

belief that seeing the problem as one of sovereignty (or the state) means conceiving power as law and prohibition. According to Foucault the juridical conception sees power only in negative terms: 'it "excludes", it "represses", it "censors", it "abstracts"', it "masks", it "conceals"'.³⁹ Likewise 'in defining the effects of power as repression, one adopts a purely juridical conception of...power, one identifies power with a law which says no, power is taken above all as carrying the force of a prohibition'.⁴⁰ Foucault believes that such a conception of power follows automatically from conceiving power in juridical terms, with law at its heart and sovereignty at its apex. Law, for Foucault, always refers to the sword, it cannot help but be armed.⁴¹

Instead of a prohibitive negative view Foucault suggests that an analysis of the disciplinary nature of power reveals that power produces. It 'traverses and produces things, it induces pleasure, forms knowledge, produces discourse. It [is a] productive network which runs through the whole social body'. Ultimately power produces reality.⁴² The distinction between the 'negative prohibitive/repressive' view of power and Foucault's 'positive productive' view can be brought out via a discussion on sexuality, for the key theme of Volume One of The History of Sexuality is the attempt to illustrate that power does not merely repress sexuality, but, by acting on the body, can measure and shape that body, can organise and re-organise it; in the final analysis it can produce resistances to it.

The trajectory of Volume One of The History of Sexuality is interesting here. It begins with a critique of the repressive hypothesis, moves to an examination of the juridico-discursive conception of power, and then finally shifts to an outline of the reading of power as productive and norm-creating, through an account of the deployment of sexuality. The 'repressive hypothesis' assumes that bourgeois society has developed a repressive attitude towards sexuality, especially in the Victorian era, with a triple edict of taboo, non-existence and silence. Repression provides a link between power, knowledge and sexuality. Foucault suggests this formulation provides critics of society, especially Marxists, with a comfortable double belief: that this 'repression' clearly coincides with capitalism and bourgeois society; and that therefore we must transgress the laws and break the prohibitions.⁴³ In The History of Sexuality Foucault does not direct his criticism in any particular

direction - he mentions Reich twice. But in interviews he is far more open about which specific theories he has in mind, claiming that one of his intentions is to 'distinguish myself from para-Marxists like Marcuse who give the notion of repression an exaggerated role' and expressing his dissatisfaction with the Reichian analysis of sexuality.⁴⁴ So Foucault clearly associates the repressive hypothesis in the analysis of sexuality with Marxist accounts of power and what he considers to be their assumptions about the negative, prohibitory nature of power.

Yet despite this there are occasions when Foucault sounds very much like Reich or Marcuse himself. For example, he equates the era of bio-power with the subjugation of bodies, and suggests that bio-power was without question an indispensable element in the development of capitalism.⁴⁵ More generally, although his critique of the juridico-discursive concept of power is intended to function as a critique of Marxism, Foucault's analysis often lends itself to a Marxist reading. It is clear that, despite the fact that he variously calls this power 'carceral', 'panoptic', 'capillary', a 'punitive city' and other such terms, he directly associates new disciplinary power with the growth of bourgeois society in the nineteenth century. Disciplinary power is variously described as a response to the growing threat of working class disorder, related to the development of the productive apparatus and the accumulation of capital, a fundamental instrument in the constitution of industrial capitalism, linked to the problem of a rising bourgeois class's concern with its own 'blood' or 'caste' purity that led to greater interventions in the social body. At times he even identifies the bourgeois class as the conscious agency in the development of disciplinary methods, as in his claim above that the mechanisms were a product of the bourgeoisie as it sought to consolidate its power.⁴⁶

However, Foucault makes no attempt to theorise how, why and who directed these disciplinary techniques. Their 'specific role in profit' remains unspecified.⁴⁷ This is partly due to Foucault's deep structuralist neglect of the question of agency. His continual claim that we should not ask 'who has power?' or 'for what purposes is power exercised?' leads him away from positive identification of the social groups whose practical initiatives lay behind the developments of the disciplinary institutions.⁴⁸ The fact that such questions would not yield simple answers, due

to the complex political and social struggles in European states at the time⁴⁹ is, in an immediate sense, irrelevant, for Foucault does not even get that far. Instead he ignores the question of agency altogether and shifts away from any analysis of individual, group or class action to an analysis of institutions. But this merely shifts the problem. Hence, when he discusses the disciplinary mechanisms he declares that they are 'more efficient', 'more effective' or 'increasing its effectiveness'.⁵⁰ Honneth points to two possible explanations for such descriptions. One is that the effectiveness of the means of social control is measured by criteria fixed by the institutional framework of a given social order, in which case the standard and measure of the effectiveness would depend upon particular social and political conditions. The other is that the criteria for assessment of social control is independent of a specific social order and is historically invariant. But, as Honneth argues,

It is unwarranted to claim that the newly developed procedures of control are more effective than the instruments of social control found in pre-bourgeois forms of domination, since they serve the maintenance and stability of a different social order, a new institutional framework. However Foucault seems to claim precisely this.⁵¹

The point is that because Foucault shies away from any discussion of agency, and because he wants at all costs to avoid developing anything that could be construed as a 'Marxist' analysis, he equates the carceral society with bourgeois society but then ignores precisely the question of why bourgeois society developed in this way. He is thus forced to discuss the disciplinary methods increased 'effectiveness' without ever adequately explaining what this means.

Moreover, one of the features of the development of bourgeois society is precisely the development of the modern state and its separation from civil society. By hinting at the importance of disciplinary regimes to bourgeois society but then shifting away from any further analysis as to what this might mean, Foucault not only fails to address the question of agency in terms of both its general nature and its historical specifics, he also fails to address how this new disciplinary regime is linked to a central feature of modernity, the modern state. This increases the significance of his rejection of the state-civil society distinction and the ambiguity

over the state.

Foucault and the End of Politics

Law - Norm - Administration

One of the outcomes of Foucault's suggestion that we move from a juridico-discursive to a disciplinary conception of power is that the centrality of law to the practice of power is rejected. Yet it soon becomes clear that the legal sphere cannot be treated in such a fashion. The result is a fundamental ambiguity regarding the place of law. In this section we will expose this ambiguity following Foucault's rejection of law before going on to show how Foucault in fact dissolves law into norm, which is in turn dissolved into administration.

In Discipline and Punish, The History of Sexuality, his essays and lectures, and his later work on governmentality Foucault is concerned to show how his analyses of disciplinary mechanisms and bio-power are superior to previous analyses of punishment and sex because they do not privilege the law. He claims that punishment is a tactic of power rather than the product of law. It is a product of a disciplinary network that effects a suspension of the law.⁵² The analysis of modern power means we must

rid ourselves of a juridical and negative representation of power, and cease to conceive of it in terms of law, prohibition, liberty, and sovereignty... Power in modern societies has not in fact governed sexuality through law and sovereignty... We must...conceive of sex without the law, and power without the king.⁵³

This means that 'the discourse of discipline has nothing in common with that of law'.⁵⁴ And in his work on 'governmentality' Foucault writes that 'the instruments of government, instead of being laws, now come to be a range of multiform tactics. Within the perspective of government, law is not what is important'.⁵⁵

The point, then, is that the new technologies of power are 'foreign' to the concept of law.⁵⁶ This has two consequences. First, law assumes a problematic place in Foucault's analysis; law appears to be subordinated or displaced, and for this reason one can talk of Foucault's 'expulsion of law'.⁵⁷ Second, when Foucault does address law it is often in highly ambiguous terms. Thus although he claims

that the new disciplinary mechanisms displace law, he also points to the emergence of an 'infra-law', a 'counter-law' or even a 'new form of law' which is internal to the disciplinary mechanisms.

In appearance the disciplines constitute nothing more than an infra-law. They seem to extend the general forms defined by law to the infinitesimal level of individual lives... The disciplines should be regarded as a sort of counter-law. They have the precise role of introducing insuperable asymmetries and excluding reciprocities... Whereas the judicial systems define juridical subjects according to universal norms, the disciplines characterise, classify, specialise... In any case, in the space and during the time in which they exercise their control and bring into play the asymmetries of their power, they effect a suspension of the law that is never total, but is never annulled either. Regular and institutional as it may be, the discipline, in its mechanism, is a 'counter-law'.⁵⁸

In the final chapter in Discipline and Punish Foucault suggests that the new economy of power 'permitted the emergence of a new form of 'law': a mixture of legality and nature, prescription and constitution, the norm. This had a whole series of effects: the internal dislocation of the judicial power, or at least of its functioning'.⁵⁹ It does this because the carceral system plays the two registers in which it is deployed - the register of justice and the extra-legal register of discipline - against one another, giving legal sanction to the disciplinary mechanisms and the judgements they enforce through which they become 'relatively autonomous and independent'.⁶⁰ The ambiguities surrounding the idea of a 'new form of law' or a 'counter-law' are exacerbated by suggestions that law is partly engaged in 'absorbing' the new disciplines,⁶¹ and yet the procedures of normalisation 'colonise' the law,⁶²

These ambiguities lead to a number of difficulties. In his concern with punishment as a mode of practice of modern power, Foucault obscures the fact that punishment, as discipline, is legitimised through the law. There are, after all, legal and illegal forms of punishment, and however much an institution has its 'own' rules and officials administering them the institution itself, as well as its internal order, is legitimised through law.⁶³ Moreover, Foucault is rather misled through his own choice of institutional model. His rhetorical question as to whether it is surprising that with their regular chronologies, forced labour, authorities of

surveillance and registration and experts in normality, prisons ‘resemble factories, schools, barracks, hospitals’,⁶⁴ is, as Honneth notes, rooted in a failure to distinguish ‘between social organisations in which membership is regulated on the basis of juridically free contracts and total institutions in which membership is coerced on the basis of legal orders’.⁶⁵ This is partly the case because of his refusal to deal with the centrality to modern law of the juridically free subject, for in turning away from the juridico-discursive conception of power Foucault also turns away from some of its central components.

Foucault’s criticism of the way the juridical subject has played such a central role in political theory is partly due to the way political theory has laboured under the notion of the contract, a notion which Foucault is right to criticise. But in criticising it he declares the juridical subject to be a fiction, suggesting its replacement with the more materialist focus on bodies and the controls over them.⁶⁶ This facilitates the turn to an analysis of the techniques of power in terms of both an anatomo-politics of the human body and a bio-politics of the population.⁶⁷ But in doing so Foucault fails to address the importance of the juridical subject in the development of the state and administration. He fails to appreciate that legal contracts, most significantly the labour contract, can only be made by formal legal subjects. Moreover, the legal and administrative institutions that regulate the relations between legal subjects are far from ‘fictitious’. Legal subjects are not simply a fiction, they are at the heart of the constitution of bourgeois social order. To ignore this, and the institutions that constitute and regulate the legal subject, is to ignore the very material effects of the ‘fiction’.

In fact Foucault’s replacement of the legal subject with bodies is, as Gillian Rose notes, a spurious materialism. By deliberately reviving the theological opposition between body and soul as some kind of replacement for the legal subject - as in his comments that the soul is the prison of the body⁶⁸ - Foucault automatically abandons the attempt to analyse the historical origins and political significance of the legal subject. To transcribe individual experience in terms of the body reaffirms the body/soul dichotomy and replaces a fiction with a chimera.⁶⁹ This replacement also fails to recognise that not all legal subjects are human beings and therefore cannot be treated as ‘bodies’. Legal subjectivity is a far more complex category

than Foucault allows for, including as it does both human individuals and (non-human) corporate entities. To replace such a 'fiction' with the category of the body is not a step forward in materialist analysis but, given its over-simplification of the concept of legal subjectivity, can only be a step backwards.⁷⁰

As part of his attempt to distinguish his own work from the 'juridico-discursive' concept of power Foucault separates law and norm: 'Another consequence of this development of bio-power was the growing importance assumed by the action of the norm, at the expense of the juridical system of the law'.⁷¹ The discourse of discipline is concerned not with law but norm and the society of normalisation, for the 'procedures of normalisation come to be ever more constantly engaged in the colonisation of those of law'.⁷²

Foucault's distinction between law and norm rests heavily upon his equation of law with the state and sovereignty, and therefore 'repression', an equation which he claims obscures the productive aspects of power.

The juridical system...is utterly incongruous with the new methods of power whose operation is not ensured by right but by technique, not by law but by normalization, not by punishment but by control, methods that are employed on all levels and in forms that go beyond the state and its apparatus.⁷³

Yet the equivalence drawn between law and repression, upon which his separation of law and norm is based, is unwarranted. It is simply untrue to argue that law is concerned only with saying 'no', with prohibiting, with death. Undoubtedly some laws do these things, but others do not, and law in general can not be reduced to this without a resultant loss of understanding.⁷⁴ Law acts as a constitutive force across and throughout the whole of society. Far from being separate from norm creation, law is bound up with it. One might want to say that, like power, law produces, and one of the things it produces is norms. In many ways Foucault is guilty of the very sin he accuses others of, for it becomes clear that the image of law as 'command', in which law is regarded as a set of commands which forbid or demand certain acts under threat of punishment, is in fact Foucault's image.⁷⁵ Given such an image it is apparent that the disciplinary network of norm-creating power relations must be separate from law. But this is only the case if one holds a command theory of law. If one has a broader conception of law involving a

recognition of its wider policing and regulative functions, then the separation between them cannot be sustained. In other words, Foucault's distinction between law and norm rests on the very conception of law of which he is critical and which in fact *affirms* the dichotomy repression/creation rather than overcomes it.⁷⁶ Foucault is forced into such a position because his rejection of the state-civil society distinction leaves him without the conceptual tools to address the issue of law adequately. Hence his decision to equate law with the 'old' regime of sovereign power necessarily results in a dismissal of law with the 'old' way of thinking about power.

Now, it is true that on occasion Foucault suggests that it is not that law fades into the background, but that it 'tends to operate more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses'.⁷⁷ But such claims are infrequent and run against the general thrust of his argument that law is displaced by normalisation. Foucault's difficulty here is exacerbated by his tendency to integrate the juridico-discursive conception of power with the law itself, the result of which is that the rejection of the former leads to denigration of the latter⁷⁸ resulting in a failure to appreciate the complexities of both.

The argument thus far is that the law is never simply juridico-discursive (and therefore 'repressive'). Law defines the very agents that can be regarded as juridical subjects, that is, it defines the very agents of its regulation. In this sense, law constitutes the very objects of its concern. One might want to say, in the *lingua franca* of French theory, that it is legal interpellation that constitutes the social relation that is juridical subjectivity. This is most clearly shown in the constitution of the citizen as both subject of right and object of administration, as shall be argued in Part III. Furthermore laws set norms of conduct on these subjects, whether these be behavioural norms (in private as well as public) on human subjects or norms of administration on corporate enterprises.⁷⁹

This is partly illustrated by the ambiguous meaning of Foucault's use of the term 'norm' itself, oscillating between compulsorily fixed patterns of conduct and the norm of moral action.⁸⁰ This both allows and encourages ambiguous formulations, thus

The power of the Norm appears through the disciplines. Is this the new law of modern society? Let us say rather that, since the eighteenth century, it has joined the other powers - the Law, the Word (Parole) and the Text, Tradition - imposing new delimitations on them.⁸¹

And he goes on to discuss the Normal as establishing both a principle of coercion and standardization. This ambiguity, whilst seemingly separating law and norm, in fact draws them together, in the process incorporating law into norm. Foucault thus appears to dissolve law into norm.

A similar and related set of problems appear in the use of the category 'administration' in Foucault's work, for the distinction drawn between law and norm runs parallel to the distinction drawn between law and administration. The distinction between a juridico-discursive analysis of power and an analysis based on its positive norm-creating aspects in Discipline and Punish and The History of Sexuality (Volume One) is both mirrored in, and rests upon, the supposition regarding an historical transformation from a juridical system to a society of administration. Thus Foucault suggests that the older operation of power which allowed the sovereign to inflict death has been replaced by 'the function of administering life'.⁸² The transformation to disciplinary power carves out a series of spaces for the administration of men, in particular the administration of sexuality.⁸³ Thus administration serves the function of norm-creation and norm-governing, making it central to the constitution of order, yet distinct from law for precisely that reason.

Law by definition is always referred to a juridical system, and order is referred to an administrative system, to a state's specific order... It is impossible to reconcile law and order because when you try to do so it is only in the form of an integration of law into the state's order.⁸⁴

It is because Foucault has so effectively separated law and administration and warned us away from the state that he resists placing law with administration and linking the two to the state and its constitutive power over order. Foucault's binary opposition, this time between law and administration, once again serves to obscure the complex relationship between the two aspects of the opposition. For law and administration cannot be counterposed in any simple manner. In practical terms

there is no separation between law and administration, to the extent that one cannot comprehend the developments in the state from 1832 onwards if one assumes that this distinction can be made. The British state developed a law-and-administration continuum in the process of its reconstitution of political order in the late-nineteenth century. It is precisely this that has caused so many theoretical difficulties, for Marxists and non-Marxists alike. This argument is developed in Part III below. Here we can briefly note that administration is law in three ways: it creates law, is subject to law, and acts through legal forms.⁸⁵ We can use the example of tribunals to demonstrate this. Historically the growth of tribunals arose alongside the development of the welfare state during the early part of the twentieth century, dealing with, in many cases, the very areas of Foucault's concern: health, social security, professional discipline. They came to administer disputes between the individual and the state outside the ordinary court system. Likewise industrial tribunals came to exercise exclusive jurisdiction in matters concerning the labour contract.⁸⁶ In this sense the legal subject of modern society is not only a subject of rights, but also an object of administration. Both right (law) and administration are developments of the British state from 1832, functioning as the medium through which the state maintains social and political order. As such it is impossible to present them as distinct realms and processes in the way Foucault seems to; rather they act together. These points will be developed in detail in Part III.

When Foucault writes that the paradox concerning power is that since the eighteenth century society 'has created so many technologies of power that are foreign to the concept of law'⁸⁷ he is undoubtedly identifying a key problem, which he attempts to solve by developing the categories norm and administration. He is right to focus on the nature of administration and its centrality to modern power. However, his account is conceptually weakened by the loss of the conceptual distinction between state and civil society. Although the initial outcome of this is an ambiguity concerning the state in Foucault's work, the ultimate outcome is that the state is dissolved into power, and then into the social.

State - Power - The Social

The ambiguity regarding the state in his work allows Foucault to develop an account of the growth of the institutions of disciplinary society independently of any analysis of the state. Indeed, it is by downplaying the role of the state in the shaping and regulating of the development of disciplinary apparatuses that Foucault stresses their local and diverse points of origin. Just as Foucault obscures the fact that even 'modern' power is legitimised through law, so his account of the institutions of discipline is given independently of the process of their social establishment, an account which would necessarily lead him to address the question of the state.⁸⁸ Foucault is assisted in this through his expansion of the category 'discipline', whereby although it appears to centre on institutions it in fact is 'de-institutionalised', 'swarming freely' throughout the social body.⁸⁹ Whether Foucault is a *pluralist* in his denial of the existence of a centre⁹⁰ is less important than the fact that the treatment of the state as just one locus of power amongst many others, undoubtedly an effect of his decision to restrict the concept of sovereignty to the old system of power, loses the very meaning of the state; a state that is merely a locus of power like any other locus of power is no state at all.⁹¹

Even where Foucault appears to emphasise the role of the state, in his work on governmentality, he simultaneously, and surreptitiously, plays down its significance. In his work on governmental rationality - the concern with policing and economy, the surveillance, control of, and intervention in, the population - Foucault points to the way the art of government leads to the development of a whole range of *savoirs* and complex governmental apparatuses, institutions and procedures which allow the exercise of power over a population. The place of the state should be analysed, if it is to be analysed at all, in terms of the governmentalisation of the state from the late-eighteenth century. 'Maybe what is really important for our modernity...is not so much the *'etatisation'* of society, as the 'governmentalisation' of the state'. For Foucault it is not that civil society has become subject to increased administration by the state, but that the growing administration of society takes place at a number of different levels, often outside of the state. It is this governmentality that has allowed the state to survive.⁹²

Now, on the one hand this appears to acknowledge that the state has some

importance, and on occasion Foucault even suggests that in this governmentalisation the population is intended to be active 'in the interest of the state's power', to which end health, birth-rate and hygiene play an important role.⁹³ By linking these claims to his earlier work it can be argued that the position of the state in the transformation to the disciplinary society is that it becomes 'governmentalised', a reading which supposedly answers those critics who had accused him of overlooking or ignoring the state.⁹⁴ On the other hand, conceptualising the state as 'governmentalised' in fact *consolidates* Foucault's downplaying of the state, for his argument rests on the supposition that the state lacks any unity and lacks any function other than to be a tactic of governmentality.⁹⁵

Similarly, when Foucault asks what type of political rationality the developing state produced he points to the *reason of state* and the *theory of police*. The latter is read through seventeenth and eighteenth century writers, allowing Foucault to stress its non-institutional nature. Thus the police 'appears as an administration heading the state, together with the judiciary, the army, and the exchequer', 'the police includes everything', is intended to provide the city with adornment and splendour but also to foster working relations between men in their most general sense: it must see to religion, morals, health, supplies, roads, public safety, factories, the poor. In other words, the police must regulate social relations.⁹⁶ Such comments shed light on some of the passages in Discipline and Punish where Foucault suggests that discipline can be taken over by a number of apparatuses or institutions, including the state, 'whose major, if not exclusive, function is to assure that discipline reigns over society as a whole (the police)'.⁹⁷ Now, such a conception of police is not far from that offered by Hegel, identifying the police with 'the whole body of society' and linking the 'happiness' of the state with the happiness of its citizens. But the key difference is that Hegel provides an understanding as to *why* such policing is necessary. For Hegel, as for Marx, policing is necessary because of the contradictions of poverty, and the existence of classes and struggle on the one hand, and those caused through the separation of state and civil society on the other. Foucault's similar reading of police is notable for the absence of these aspects. In particular, Foucault develops a

conception of police independently of any real conception of the state. Far from opening up the analysis of the state in a way that 'state-focused' theory and analysis could not,⁹⁸ Foucault in fact closes it off.

One of the outcomes of ignoring the state in this way is that Foucault is left with an all-embracing concept of power. In one of his final interviews he claims that

When one speaks of 'power' people think immediately of a political structure, a government, a dominant social class, the master facing the slave and so on. That is not at all what I think when I speak of 'relationships of power'. I mean that in human relationships, whatever they are...power is always present.⁹⁹

Whilst Foucault is to be credited with stressing the existence of power in all human relations, the danger is that the significant differences between different forms, modalities, institutions and exercises of power, most obviously the difference between the power of the state in relation to civil society and the relative power of individuals and groups within civil society, will be overlooked; such a metaphysics of power¹⁰⁰ runs the risk of losing the specificity of political. In this sense it can be argued that Foucault dissolves politics into power.

Yet this dissolution is taken one step further in the claim that because power operates in all human relationships it permeates the whole social body. His rejection of the state as a centre of analysis does not leave him with an analysis at the level of civil society; as we have seen, the lack of focus on the state is both a result of and a party to the rejection of the state-civil society dichotomy. Given this, the only conceptual tool Foucault is left with is 'the social' (sometimes designated as 'the social body'). Thus the disciplinary mechanisms outlined in Discipline and Punish are described as operating throughout the whole social body.

The panoptic schema...was destined to spread throughout the social body. In penal justice the prison transformed the punitive procedure into a penitentiary technique; the carceral archipelago transported this technique from the penal institution to the entire social body.¹⁰¹

In the same vein Foucault points to the way 'that power is co-extensive with the social body'¹⁰² Thus simultaneous with the dissolution of the political into 'power' is the expansion of the concept 'power' throughout the whole social body.

One might therefore say that it is through an expanded concept of power that Foucault dissolves the political into the social.

Now, if one is talking of the disciplinarization of the state and the *etatisation* of society then in effect one has dissolved state into society, for the state can be read as coterminous with the social body. This is a direction actively developed by some of those working with the conceptual apparatus developed by Foucault. Pasquino, for example, writes that

If one rids oneself of the idea of the State as an apparatus or instance separate from the social body, the focus of all political struggle, which must be either democratised or destroyed, once its veritable nature has been revealed, or which must be appropriated, in order to take power; if one rids oneself of this old idea...one can perhaps recover another meaning of this word State which was more or less that which it had in the 17th century...the 'entire body of civil society'. This would resituate the analysis of relations of power wholly within the interior of this social body.¹⁰³

One of the difficulties this raises is that rejecting the state-civil society distinction and conceptualising all relations as 'power' relations renders one unable to distinguish between different state forms. When questioned on this Foucault suggests that his characterisation of society as a 'carceral archipelago' is a conscious attempt effort to point to the existence of disciplinary power in different state forms, to indicate the way the penal methods of Nazism and Stalinism were adoptions of the methods developed in bourgeois society, and to show how the revolutionary transformation that was 1917 left myriad other power relations exactly as they were.¹⁰⁴ But the problem still remains as to how to distinguish between state forms, the very problem found in Althusser's conceptual apparatus following his rejection of the state and civil society distinction too. The crucial difference between Althusser and Foucault here is that whereas Althusser conceptualises various aspects of civil society as part of the state, or at least part of the ideological state apparatus, in the writings of Foucault and his followers it is the various aspects of the state apparatus that are subsumed into the social body. Although the 'direction' is different the identical results draw out quite clearly the difficulties in rejecting the state-civil society distinction.¹⁰⁵

The use of the category 'social body' is on the one hand an unintentional product

of Foucault's rejection of the state-civil society distinction. On the other hand it is a deliberate move in his later work to designate a field of research into the constitution of the social. As Dews notes, the social in Foucault's earlier work is portrayed as constituted by systems independent of human consciousness and agency. Introducing the concept of power allows the social to be portrayed as constituted by power and administration.¹⁰⁶ In this sense it is different from 'society' in that it refers to a specific historical event or period in which there emerged a network of and through which power and administration could be exercised.¹⁰⁷ Nonetheless it also appears to be one of Foucault's key theoretical categories.

This dissolution of the political into the social, and the dual meaning of the social, has had serious consequences for social and political thought. For example, in Hegemony and Socialist Strategy Laclau and Mouffe seek to tackle the problem posed within Marxism by the polity/economy distinction, a variation on the state/civil society distinction. Struggling to find a way out of the choice between the monism of determination in the last instance and the dualism of separate spheres, Laclau and Mouffe's key theoretical move is to reject the polity/economy distinction altogether. In doing so their conception of the political, seen as a practice of creation, reproduction and transformation of social relations, is in fact dissolved into the social. Thus 'the problem of the political is the problem of the institution of the social'.¹⁰⁸ The difficulty with this is that the semantic wealth of the term 'institution' is lost if one reads it solely as 'actively instituting' without regard for actual institutional structures. Laclau and Mouffe's choice of the word 'institution', whilst playing on the semantic wealth of the term, in fact obscures the lack of reference to actual, *political*, institutions. As Mouzelis notes

the well-trodden idea that there is a political dimension in all social interaction...is no reason to ignore or even deny the existence, in all capitalist societies, of a differentiated set of institutional structures which have a predominantly political character i.e. which are geared to the production and reproduction of the overall system of domination... The fact that we often use the term politics to refer both to a differentiated institutional sphere and to the 'political' as an inherent dimension of all social situations is no good reason for rejecting the former in favour of the latter.¹⁰⁹

As was noted in Chapter Two, the socialist project as conceived by Laclau and Mouffe rests on a reading of Gramsci's concept of hegemony, without classes. Here we can add that whilst it may appear that Laclau and Mouffe's reading of the social and the political opens the way for an exploration of the ongoing socialisation of the political and politicisation of the social,¹¹⁰ in fact they obscure this very issue by following Foucault in dissolving the political into the social.

In his critique of Foucault, Habermas claims that Foucault has a very unsociological concept of the social.¹¹¹ In fact, it would appear that the conception of the social found in the work of Foucault and his followers is decidedly sociological in that, following our discussion in Chapter One, it fails to have any categories with which to analyse society as a whole, and ends with an all-embracing concept, 'the social', against which something (bodies, administration) can be played off. Whilst this dual series of dissolutions - from law to administration, through norm; from the state to the social, through power - has been traced separately here, in Foucault's work they are part of one and the same process. For the result of Foucault's work is precisely the link that is made between the social and administration. At the end of Part II of Discipline and Punish, rhetorically asking why it is that the disciplinary mode of punishment took off when it did, Foucault contrasts the two options: 'we have then the sovereign and his force, the social body and the administrative apparatus'.¹¹² The new mode of power is one of the administration of the social. This contrasts quite starkly with the argument here, for instead of a materialist analysis which rests on the conceptual distinction between state and civil society but that seeks to rethink this distinction through the category of political administration (and which retains the category of the social as a fundamental point of critique, positing a future overcoming of dichotomies), the analysis found in the work of Foucault and his followers is simply that of administration and the social. This can be seen in the work of some of those who seek to work within a framework of Foucauldian analysis or with a Foucauldian 'tool-kit'. We will take Jacques Donzelot and Nikolas Rose as our examples.¹¹³

In both Donzelot and Rose the social is taken as the grounds for administration; in this the family plays a central role. When discussing the constitution of order

both Donzelot and Rose refuse to employ the notion of the state as an agent in this constitution. For example, philanthropy is regarded as having emerged from neither the state nor the 'private'. Instead philanthropy is 'considered as a deliberately depoliticizing strategy for establishing public services and facilities at a sensitive point midway between private initiative and the state'.¹¹⁴ Philanthropy was one of the forces through which order was constituted, and this is so because it functioned through the family. Rose:

The reconstruction of the working class family in the nineteenth century took place not through the activities of the state, but through an initiative that maintained a certain distance from the organs of political power - philanthropy.... In England and France philanthropists sought...to organize the conjugal, domestic, and parental relations of the poor.¹¹⁵

Both Donzelot and Rose are at pains to stress that in the campaigns waged by philanthropists and other 'specialists' the state or public authority was not involved, other than providing a legal framework for the activities. For Rose

by the start of the twentieth century the family was administered and policed by practices and agencies that were not 'private' (many of their powers were constructed legally, they were often recipients of public funds, and their agents were frequently publicly accredited by some form of licensing), but nor were they organs of central political power.¹¹⁶

The point here is that in dispensing with the state/civil society distinction, and in seeking to remove the state from the centre of analysis, both writers are left with the catch-all concept of 'the social' as a self-regulating power through various technologies of government, administration and subjectification.¹¹⁷

One of the problems posed by rejecting the notion of the state as agent is that Foucault's difficulties over the question of agency in general are replicated in an even more direct form. Denying the centrality of the state means denying its constitutive power over society. Yet for both Donzelot and Rose the individual and the family are still constituted, indeed reconstituted. The focus therefore turns to the administrative intervention of the miscellaneous entities, the 'alliances and forces', but why they intervene is never explained. So for Donzelot the family is 'made functional' with respect to 'social requirements', it is 'the essential figure

of our societies' and an 'indispensable correlate of parliamentary democracy'.¹¹⁸ What these 'social requirements' are, why they are as they are and not otherwise, why the family is 'essential', and a host of related problems all remain unclear.¹¹⁹ Apart from the obvious problem of an overt functionalism in a text that claims to be breaking with functional analysis, a text in which the language of 'effects' is used when the concept of 'cause' is denied,¹²⁰ these miscellaneous forces and alliances seem free to float in the social body yet with a certain, but unspecified, direction. Moreover, Donzelot uses explicitly political concepts concerning state forms such as 'parliamentary democracy' without relating these to the general thesis at all.

Perhaps the clearest indication of the problems arising from employing such an analysis is that having rejected the state/civil society distinction, and having placed the family at the centre of an analysis of 'the social', it merely remains for the 'social' to be conflated with the 'family'. Whilst Rose writes of the 'familialisation of society' Donzelot argues that 'with its saturation by hygienic, psychological, and pedagogical norms, it becomes harder to distinguish the family from the disciplinary continuum of the social apparatuses'.¹²¹ It is symptomatic that Donzelot admits that his own theoretical approach makes it difficult to form distinctions of this sort. His rejection of all other major theoretical traditions and their conceptual distinctions has left him free to develop a set of theoretical categories in which no conceptual distinctions can be made whatsoever: everything is the social, the social is everywhere in the family, the family must be everywhere in the social.

Further problems arise from an analysis that hinges on 'the socialisation of politics' (Donzelot) or 'the governmentalisation of the state' (Rose),¹²² which is that, understandably, any notion of the constitutive power of the state is absent, the result being a state that is essentially passive. When, for example, Donzelot seeks to discuss employment and wage labour contracts he can only conceive of the state as a force standing outside or above: the state 'supports' collective work contracts, it is the 'guarantor' of the progress of social relations.¹²³ Likewise for Rose, the programmes and schemes of social government 'were gradually linked up to the apparatus of the state' yet 'the state apparatus did not, could not, eliminate all other

centres of power or decision'.¹²⁴ Any actively constitutive power of the state is denied and its actual action (it *did not* eliminate all other centres of power) is read as the limits to its action (it *could not* eliminate them). As Donzelot notes, his perception of the state supporting collective work contracts reinforces the liberal discourse of the contract; he clearly does not recognise that, for all his claims to be part of, along with Foucault and the Foucauldians, an attempt to forge a break in political theory in general and Marxism in particular, the new conceptual apparatus simply leaves them with an essentially liberal conception of the state.

In terms of law and administration, both writers, following Foucault, find the category 'administration' indispensable, but there remains some ambiguity over 'law', the relationship between them, and their relations to the state. Donzelot and Rose recognise that law sanctions surveillance and supplies administrative agencies with their powers. Moreover, the courts function as a supportive agency in the tutelary complex. But there is no attempt to grapple with the theoretical issues involved. To those who argue that the law provides a framework for the activities of regulatory agencies and that this legal framework is established by the state, thereby creating a set of mechanisms through which social control can be maintained, Rose notes that the issue is more than one of control, that it is about the constitutive power that these technologies have in the formation of citizens. However, when it comes to specifying which bodies have this power he downplays the state and emphasises the other agencies, understood as administrative rather than juridical.¹²⁵

It seems to me that the domain of the social is, in a very real sense, constituted in and through the apparatuses of administration...which, over the last hundred years or so, have progressively installed themselves between law and the population. Whilst the apparatuses of the juridical instance operate according to criteria which are, at least in principle, specifiable in law, this is not the case in the social sphere. For the practices here, though they may be constituted by law, operate according to criteria which, from the point of view of law, are indeterminate.¹²⁶

Thus we have apparatuses of administration that have *installed themselves* between law and the population. The apparatuses of administration are in the social sphere, the apparatuses of the juridical instance are not. Yet the law constitutes the social

(or at least may constitute the practices in it). Law exists in a realm that is not of the social and in a realm that is, well, legal. This whole conceptual schema appears to miss the crucial dimension of the universality of the state. In separating law and administration in this way Rose is unable to see that law and administration are integrally linked, that they are so at the level of the state, and that this integral link between the two provides the state with its constitutive power. Rose is assisted here through his use of the terminology of ‘governmentalisation of the state’, for this enables him to discuss ‘legislation’ and ‘government’ without ‘state’:

the enactment of legislation is a powerful resource in the creation of centres, to the extent that law translates aspects of a governmental programme into mechanisms that establish, constrain, or empower certain agents or entities and set some of the key terms of their deliberations.¹²⁷

It is because of formulations such as these that when Rose does hint at the existence of the state it is in essentially passive terms, as noted above.

This is not to say that all law is straightforwardly state law and can therefore be discussed as such but it is to say that legal order is constituted as such by the state, and that law, like administration, is fundamentally entwined in/with the state.

On the Subject of Resistance and War

Foucault insists that the corollary of power is resistance; wherever there is power there is the possibility of resistance. ‘In the relations of power there is necessarily the possibility of resistance, for if there were no possibility of resistance...there would be no relations of power.’¹²⁸ However, given that power operates in all relations, so must resistance. Since power is everywhere so resistance is everywhere.¹²⁹ Whilst this may allow Foucault a means of escaping the accusations of nihilism, passivity and political quietism,¹³⁰ it leaves him with a fundamental problem concerning the nature of resistance. The argument here will be that the category ‘resistance’ as it features in Foucault’s work lacks the kind of specificity needed for such a central concept, a lack illustrated through Foucault’s simultaneous use of the categories of warfare. This will be illustrated through a comparison with the alternative category ‘struggle’.

As it features in Foucault’s work resistance has received perhaps the most severe

criticism, centring around the tension between this category and that of power. If power is taken to exist in all relations then in and of itself it cannot be a bad thing, in which case on what grounds does resistance take place? Foucault's supposed 'ethical quandary' is taken to rest on his lack of any normative basis for the resistance to power. The point has been made most succinctly by Fraser:

Why is struggle to be preferred to submission? Why ought domination to be resisted? Only with the introduction of normative notions of some kind could Foucault begin to answer this question. Only with the introduction of normative notions could he begin to tell us what is wrong with the modern power/knowledge regime and why we ought to oppose it.¹³¹

As Fraser argues, either Foucault has to accept that his position is nihilistic or pessimistic, or he has to make an appeal to some idea of 'liberation' on the grounds of which one might resist. Whilst such a criticism has some strength, the argument here is that the theoretical contours of his work preclude Foucault from making such a choice; his metaphysics of power can only be mirrored in a metaphysics of resistance. This makes the category of resistance weaker than that of the essentially social category of struggle found in Hegel and Marx.

Just as Foucault is unable to specify who holds power and for what purpose, so he cannot identify who resists and why. In one way Foucault comes to depend upon the answer 'the body and its pleasures'. We aim at a 'general economy of pleasure not based on sexual norms'. We develop the care of the self towards an aesthetics of existence.¹³² There are numerous problems with this: first, as he himself shows in later volumes of The History of Sexuality, the body and its pleasures are exceedingly historically variant; second, how or why resistance comes from *docile* bodies, constructed as such by the operations of power, is never addressed; third, surely any aesthetics of existence is again part of the process in which individuals subjectify themselves, in which case it is as much a process of power as resistance; finally, to fall back on to bodies and their pleasures runs the risk of echoing the very claims of those who hold a 'repressive hypothesis'.

Hinting at a more political answer Foucault suggests we look to the 'plebs', 'the permanent, ever silent target for apparatuses of power', on the grounds that 'there is indeed always something in the social body, in classes, groups and individuals

themselves which in some sense escapes relations of power'. The reference to classes or groups here should not mislead, for as soon as Foucault appears to identify something like an agency he resorts to an inversion of his theology of power, mystifying once again: 'there is certainly no such thing as "the" plebs; rather there is, as it were, a certain plebian quality or aspect. There is plebs in bodies, in souls, in individuals, in the proletariat, in the bourgeoisie, but everywhere in a diversity of forms and extensions, of energies and irreducibilities'.¹³³ Resistance occurs because the plebian 'quality or aspect' has taken hold, a quality that is so like the spirit of power that it can take hold of anyone, anytime, anyplace. Now, one of the problems here is that on Foucault's own account of power there is nothing that escapes the networks of power, certainly not bodies or the plebs.¹³⁴ But the real problem with Foucault's formulations concerning the body or the plebs is that both are a way of letting back in, through the back door, a subject ejected from the outset.¹³⁵ This is ultimately bound up with Foucault's concept of subjectification, for although he points to the resistance that power meets and the constitution of subjects by power, in fact what are constituted in Foucault is not so much subjects as objects. In Discipline and Punish he writes that 'the prisoner is seen but does not see; he is the object of information but never a subject in communication'.¹³⁶ One is tempted to argue that, conceptualised as docile bodies, *one finds in Foucault the constitution of (passive) objects rather than (active) subjects*.

Poulantzas suggests that Foucault's 'resistances' remain a strictly gratuitous assertion in the sense that they are given no foundation; they are a pure affirmation of principle.¹³⁷ Foucault is left in this position because he has no conceptual means for describing resistances as anything other than counter-strategies of power.¹³⁸ Yet his resort to a kind of theological fall-back position is a result not so much of Foucault's lack of a normative framework, but because he has followed Nietzsche in so convincingly tying knowledge to the demands of power (his hyphenated category 'power-knowledge' is indicative here), and has so powerfully portrayed the victorious struggle of reason over its other, unreason, especially in Madness and Civilisation, that it becomes difficult, if not impossible, for him to conceive of a knowledge that is not instrumental in any particular relationship of

domination but is instead based on a critical understanding of the nature of existing relations and an attempt to critically reflect on their future overcoming. Aside from the methodological issue that Foucault is engaged in genealogy rather than critique, ultimately two mutually exclusive methodologies, he does occasionally allow for such a critical knowledge, but the conception is both dependent on and as obscure as his claims about the plebs: witness his suggestion that there exist ‘a whole set of knowledges, located low down on the hierarchy’, such as that of the psychiatric patient, of the ill person, of the nurse, of the doctor, and that it is through the re-emergence of these low-ranking yet popular knowledges, these subjugated, unqualified, even directly disqualified knowledges, that criticism performs its work. Aside from the question as to how a doctor’s knowledge can count as a ‘low-ranking’ or ‘disqualified’, this is a severely limited conception of knowledge and criticism, opposed as it is ‘not to the contents, methods or concepts of a science, but to the effects of the centralising powers which are linked to the institution’.¹³⁹ Thus even when Foucault does have what appears to be a critical concept of knowledge, it is merely concerned with resisting the *effects* of power-knowledge rather than its central conceptual and methodological apparatus. What Foucault fails to take account of is that, as Manfred Frank notes, struggles are always directed ‘against a certain state of order that stands in the service of an alternative order and an alternative organisation of our social interchange’.¹⁴⁰ However weakly conceived that alternative may be, there must be some reason for resisting that knowledge seeks to comprehend, so that consciousness can play its role. Although Foucault may not wish to subscribe to the view that the task of critical theory is ‘the self-clarification of the struggles and wishes of the age’¹⁴¹ he must do more than simply point to the spontaneity of ‘plebian spirits’.¹⁴²

Even when in his later work on Kant and Enlightenment, where Foucault considers the possibility of critique, this is done in terms of the use of reason by ‘the subject himself as an individual’, clearing the space for the presentation of Baudelaire as just such an individual.¹⁴³ The result of this is not to posit the use of knowledge as crucial to resistance, but the insistence that part of a critical reflection on it leads to the necessity to turn one’s life into an art-form.

For me intellectual work is related to what you could call aestheticism, meaning transforming yourself... I know very well...that knowledge can do nothing for transforming the world. Maybe I am wrong. And I am sure I am wrong from a theoretical point of view for I know very well that knowledge has transformed the world. But if I refer to my personal experience I have the feeling knowledge can't do anything for us and that power may destroy us. All the knowledge in the world can't do anything against that.¹⁴⁴

The equivocation belies the general thrust of the comments against a critical theory of knowledge.

Moreover, even if one was to concede that such comments contain a critical moment, they also indicate the consolidation of the individualism within the philosophy of the subject. Transforming oneself may be an admirable exercise, and encouraging everyone to turn their lives into an art-form equally so, but one purpose of a *collective* subject, as conceptualised in historical materialism, is to overcome the conditions of exploitation that make turning one's life into an art-form rather difficult; as Callinicos points out, to invite a street child in Bombay to make a work of art of their lives would be an insult.¹⁴⁵ To overcome such conditions, to create the conditions whereby everyone could make their lives an art-form, requires action by a collective subject. Likewise his denigration of 'progress' as an outmoded 'humanist' category, and 'humanity' as a name for just another form of rational calculation of power, makes it impossible for him to fall back on anything like 'human' values with which to make such a case for social change. But because (admittedly at its worst moments in Foucault) the Gulag appears to be the socialist version of the carceral society, because his understanding of the collective subject as conceptualised in Marx is so heavily determined by his experience in and around the PCF and because, most importantly, we are all enmeshed in a series of power relations whereby 'we all fight each other',¹⁴⁶ any concept of a collective subject struggling for progressive social change, for human emancipation, is rejected from the outset.

In terms of how one might resist the actual disciplinary powers the focus is on resistance where power is exercised: at the capillaries.¹⁴⁷ Again, because Foucault universalises power without distinguishing between its different institutions, modes and practices, any attempt to critically reflect on a future society which overturns

the powers of disciplinary (bourgeois) society is ruled out of court:

Revolution is a different type of codification of the [same] power relations. This implies that there are many different kinds of revolution, roughly speaking as many kinds as there are possible subversive recodifications of power relations, and further that one can perfectly well conceive of revolutions which leave essentially untouched the power relations which form the basis for the functioning of the state.¹⁴⁸

Thus even the faith in plebian spirit is overshadowed by the understanding that any one set of power relations will be replaced by another, of which there is no guarantee of any 'improvement'. To accept this is to accept the very myth which power would have us believe, that it is omnipotent and omniscient, that one may as well accept it as struggle against it.¹⁴⁹ In this sense one can point to the absence in genealogy of precisely the factors that make historical materialism a critique, the fact that 'all historical materialist concepts contain an accusation and an imperative'.¹⁵⁰ Although Foucault's concepts appear to contain an accusation and an imperative - people resist because of hunger, humiliation and even the promise of the millennium - ultimately 'there is no explanation for the man who revolts'.¹⁵¹ In comparison historical materialism points to the exploitation and alienation that constitutes capitalist social relations, and that this is what makes the working class 'dangerous'. Struggle can then be identified as struggle over exploitation and alienation, for the liberation from these conditions - witness Marx's account over the struggles over the length of the working day in Volume One of Capital. Failing to provide a goal for resistance, genealogy can do no such thing. The pessimism in Foucault's work that commentators have identified is not the result of analysis; it is built into his conceptual foundations, rooted in his failure to identify any redemptive possibilities contained in the changes brought about by capitalism.¹⁵² The criticism can also be related to Foucault's rejection of the state-civil society distinction and its replacement with power and the social. For the place capitalism creates for its own demise, its own 'gravediggers', is within civil society. In contrast, the social as conceptualised by Foucault and his followers is so well policed and so effectively administered that the idea of it producing its own gravediggers is unthinkable. Moreover one of the strengths of

historical materialism is that it can point to the development of administrative mechanisms as an outcome of the struggles taking place within civil society; the administrative mechanisms that mediate struggle are, like the state itself,¹⁵³ a relation of struggle.

To sustain his account of power and resistance Foucault relies on the categories of warfare, (a decision mutually dependent on his use of the military model in Discipline and Punish) but does so in such a way that warfare becomes yet another abstract universal. Although Foucault occasionally used the categories of warfare in his earlier work, the shift away from an analysis of language and meaning towards an analysis of power at the same time indicates a conscious turn to the categories of warfare. Thus he suggests that 'one's point of reference should not be to the great model of language and signs, but to that of war and battle. The history which bears and determines us has the form of a war rather than that of language: relations of power, not relations of meaning'.¹⁵⁴ Yet although the language of warfare - battle, strategy, tactics, deployment - is continually used by Foucault, no battle is ever fought and therefore none ever lost or won.¹⁵⁵ In Foucault one gets battle rather than battles.

In utilising the language of warfare this way Foucault seeks both to extend his distinction between the juridico-discursive and the disciplinary mode of power, and to further distance himself from Marxism. By inverting Clausewitz's dictum that war is politics by other means Foucault points, at least implicitly, to the existence of warfare within societies as well as between states. In the process he suggests we think of power through the concepts struggle, conflict and war as opposed to cession, contract and alienation.¹⁵⁶ This is strengthened by his contrasting the 'juridico-political theory of sovereignty' with the discourse on war.¹⁵⁷ One of the functions of universalising war in this way is that Foucault appears decidedly Hobbesian in his conceptualisation of war of all against all, transferring Hobbes' state of nature to the state of society.¹⁵⁸ This provides the basis for his critique of Hobbes, who 'has circumvented this discourse of permanent struggle and civil war...thereby saving the theory of the State'.¹⁵⁹ The criticism of Hobbes here is that, far from being a theorist of war, his concern with the theory of the state leads him to eliminate war as a historical reality.

Foucault's linking of war with struggle is useful because it rests on the understanding that social order is constituted in and through struggle. But because he avoids any question of the subjects of struggle, and because the struggle can take place between any of those who operate techniques of power and any of those who, gripped by the plebian spirit, resist this, the outcome is in fact less adequate than Hobbes, Hegel or Marx. Far from eliminating war, Hobbes was acutely aware of its significance in the constitution of political order: the state is necessary precisely because war and struggle takes place. Hegel could at least point to the significance of, on the one hand the struggle for recognition and, on the other, social divisions. It was Marx's achievement to specify the class nature of this struggle, and thus the necessity for the state in bourgeois society. Foucault's conceptualisation of struggle as the paradigm of the social¹⁶⁰ is weaker than Marx's conceptualisation of struggle between exploiting and exploited classes as the essence of civil society, (which might be described as struggle *for* the social), a struggle in which the state is inherently involved. This does not mean the reduction of all struggles to class struggles; it is one of Foucault's stronger demands that we avoid such crude over-simplification. It is, however, to insist that we do not conflate all struggles into one universal struggle, and leave it at that.

This comparison is perhaps brought out most startlingly by the absence in Foucault's most important work of any account of actual struggle (or warfare, or resistance) in the development of the mechanisms of discipline and bio-power, an absence reproduced in the work of his followers. When Foucault asks how it is that one form of punishment was adopted over another¹⁶¹ his answer shifts to an account of disciplinary power rather than the resistance to it. But why were certain administrative mechanisms chosen over others? Did the working class support or resist them, or even some sections of the class? Ditto the bourgeois class? And the aristocracy (where applicable)? If we are eschewing the model of class analysis then was it administrators, professionals, the judiciary, civil servants, organised groups? *The key absence is not of a normative framework but of analysis*: Foucault claims that his conception of resistance places it as much at the centre of analysis as power, but his own research belies that claim. In his analysis we 'hear the distant roar of thunder'¹⁶² but we never see the storm. Whilst there may be no

power without resistance, Foucault's own work shows there can be analyses of power without analyses of resistance, as neither the disqualified knowledges nor the plebian spirits make a concrete appearance. This contrasts with some important work on prisons which does point to the significance of struggle. For example, Patricia O'Brien draws out the importance of prisoners organisations and communications, some of which lend themselves to a deeply Foucauldian reading: in the case of tattooing, for example, 'in contrast to branding as a state-imposed mark of infamy and means of ostracism, tattooing was a self-imposed form of identification. It is likely that tattooing constituted a reaction to the institution and its power'. Likewise in the case of Britain, David Garland points to the resistance that went on not within the prison at the level of bodies but within and across the various sections of the ruling class.¹⁶³

More importantly, the absence of analysis of concrete struggles in Foucault's work contrasts quite explicitly with the large body of historical work written from a materialist perspective, and with the account developed in Part III below. For in Part III we shall be concerned with crucial features that are missing from Foucault's account of the productive nature of power: the state (and therefore civil society), class, and struggle. It will be argued that we do indeed need a conception of power as productive, that recognises the constitution of subjects of right and objects of administration by power, but that this needs to be developed through an understanding of state power in its relation to civil society. The state and civil society distinction needs to be rethought rather than rejected, and to be so through the category administration, in particular in terms of its relation to law. This shall be done by positing the centrality of struggle, class struggle, to the administrative mechanisms that developed as mediating institutions.

Notes to Part II

Abbreviations used:

DP = M. Foucault, Discipline and Punish (Harmondsworth, Penguin, 1977).

HS = M. Foucault, The History of Sexuality: An Introduction (Harmondsworth, Penguin, 1978).

P/K = M. Foucault, Power/Knowledge: Selected Interviews and Other Writings 1972-1977, edited by C. Gordon (Brighton, Harvester, 1980).

PPC = M. Foucault, Politics, Philosophy, Culture: Interviews and Other Writings 1977-1984, edited by L. Kritzman (London, Routledge, 1988).

Introduction

1. M. Foucault 'The Subject and Power' Afterword to H. Dreyfus & P. Rabinow Michel Foucault: Beyond Structuralism and Hermeneutics (Brighton, Harvester, 1982) p.208.

2. See for example HS p.85. For discussions see M. Dean Critical and Effective Histories: Foucault's Methods and Historical Sociology (London, Routledge, 1994) p.112-3 and J. Seigel 'Avoiding the Subject: A Foucaultian Itinerary', Journal of the History of Ideas, Vol.51 No.2 (1990). The latter comments on the links with Lacan's concept of the subject.

3. DP p.26.

4. Ibid. p.293, also p.115, 257-263.

Chapter Three

1. For the former view see M. Cousins & A. Hussain, Michel Foucault (London, Macmillan, 1984), p.240 and A. Honneth, The Critique of Power: Reflective Stages in a Critical Social Theory (London, MIT Press, 1991). For the latter view see B. Jessop, State Theory (Cambridge, Polity, 1990), p.234-8, P. Dews, Logics of Disintegration: Post-Structuralist Thought and the Claims of Critical Theory (London, Verso, 1987), p.145-8 and B. Frankel, Beyond The State? Dominant Theories and Socialist Strategies (London, Macmillan, 1983), p.16. On Foucault's ambiguity see J. Cohen & A. Arato, Civil Society and Political Theory (London, MIT Press, 1992), p.282-6.
2. Foucault, 'The Discourse on Power' in Remarks on Marx (New York, Semiotext(e), 1991), p.163-4.
3. Foucault, 'Social Security' in PPC p.67-8.
4. Lecture, College de France, 4 April 1979, quoted in C. Gordon, 'Governmental Rationality: An Introduction' in The Foucault Effect: Studies in Governmentality, edited by G. Burchell, C. Gordon & P. Miller (Hemel Hempstead, Harvester, 1991), p.23.
5. Foucault, 'History of Systems of Thought, 1979', published as 'Foucault at the College de France II: A Course Summary with an Introduction by James Bernauer', Philosophy and Social Criticism Vol.8 No.3 (1981).
6. DP p.116.
7. HS p.118-9; see also p.149-50.
8. 'History of Sexuality' in P/K p.188. Of course the key word is 'all', functioning as it does as a reason to shift analysis away from the state, though perhaps not a very good reason.
9. 'Governmentality' in The Foucault Effect op.cit. p.103.
10. 'Truth and Power' in P/K p.122.
11. Although Foucault does not describe these powers as infrastructural this reading suggests a new meaning to his category 'infrapower'. Moreover, given that these infrapowers are distinct from law, and Foucault has a tendency to equate law with the state, this makes a number of other dimensions of his work more intriguing, such as his comment that disciplinary mechanisms are 'relatively autonomous' DP p.301-2 and 'The History of Sexuality' P/K p.188.
12. DP p.222; see also 'Truth and Power' P/K p.122-3 where Foucault describes these powers as the *base* of the state.

13. See 'Two Lectures' P/K p.94; For a discussion see A. Hunt, Explorations in Law and Society: Towards a Constitutive Theory of Law (London, Routledge, 1993), ch.12 and F. Lentricchia, Ariel and the Police (Brighton, Harvester, 1988), ch.1.
14. DP p.27.
15. Honneth, Critique of Power op.cit. p.179.
16. Cousins and Hussain op.cit. p.231.
17. DP p.29; also p.177, 205, 293-4.
18. Ibid. p.168. Foucault's use of the military organisation as an prime example of the institutional exercise of modern power is mutually dependent on his use of the categories of warfare, a point developed in the last section of this chapter. Again the similarity with Marx is notable; just as for Foucault the history of the military brings out the 'correctness' of his conception of the connection between disciplinary powers and social relations so for Marx 'the history of the army brings out more clearly than anything else the correctness of our conception of the connection between the productive forces and social relations'. (Letter to Engels 25 Sept. 1857).
19. Ibid. p.48-9; see also HS p.137-8.
20. DP p.53.
21. Ibid. p.57.
22. Ibid. p.82.
23. Ibid. p.89.
24. Ibid. p.115-6.
25. Ibid. p.205; see also 'Questions on Geography' in P/K p.71. It is possible to point to some of the problematic aspects of Foucault's use of the Panopticon, for example his failure to address why it is that the Panopticon was not introduced in its time, and was widely ridiculed. Smart suggests that this is not important, as part of Foucault's concern is the relation of non-correspondence between programmes, practices and effects, B. Smart, Foucault, Marxism and Critique (London, Routledge, 1983). However, there are also other issues involved. It could be argued that Foucault obscures some of the key aspects of Bentham's conception, such as his insistence that the prison be accessible to the public as part of its democratic accountability (see DP p.207). For a discussion see J. Semple, 'Foucault and Bentham: A Defence of Panopticism' Utilitas Vol.4 No.1 (1992) and her Bentham's Prison (Oxford, Clarendon Press, 1993).

26. See the 'Translators Note' to DP. On Foucault and vision see M. Jay, 'In the Empire of the Gaze: Foucault and the Denigration of Vision in Twentieth-century French Thought' in Foucault: A Critical Reader, edited by D. C. Hoy (Oxford, Blackwell, 1986), p.175-205 and J. Rajchman, 'Foucault's Art of Seeing' in his Philosophical Events: Essays of the 80s (New York, Columbia University Press, 1991). On surveillance and modernity see C. Dandeker, Surveillance, Power and Modernity: Bureaucracy and Discipline From 1700 to the Present Day (Cambridge, Polity, 1990) and D. Lyon, The Electronic Eye: The Rise of Surveillance Society (Cambridge, Polity, 1994).

27. DP p.208; see also 'Two Lectures' P/K p.106.

28. DP p.209, my emphasis.

29. DP p.298.

30. Ibid. p.304.

31. HS p.139-45.

32. The 'break' occurs with Foucault's inaugural lecture at the College de France in 1970. Here Foucault not only indicates a shift from archaeology to genealogy, but also points to a focus on the institutional conditions of the production of knowledge: the will to truth 'relies on institutional support'. See 'Orders of Discourse' in Social Science Information Vol.10 No.2 (1971). However, once the theme of power takes centre-stage one can read this theme back into the early works. As Edward Said notes, in The World the Text, the Critic (London, Faber, 1984) (p.243), Foucault's earlier work was remarkably unconscious of its own theoretical force. To reread Madness and Civilisation after Discipline and Punish one can only be struck by how prescient the earlier work is. Foucault himself realised after his work on the prison and sexuality that his earlier work on asylums and the clinic was implicitly about power. 'When I think back now [1977] I ask myself what else it was that I was talking about in Madness and Civilisation or The Birth of the Clinic but power? Yet I'm perfectly aware that I scarcely ever used the word and have never had such a field of analyses at my disposal' ('Truth and Power' P/K p.115) Both these texts provide useful illustrations of Foucault's account of power: both works posit a major historical transformation at the end of the eighteenth and the beginning of the nineteenth centuries; both suggest that by the nineteenth century administrative and disciplinary mechanisms had developed which assisted in normalizing the population; both suggest that power-knowledge form a complex double in this normalizing process. Thus, for example, despite Foucault's insistence on the differences between the French and English asylums, as epitomized by Pinel and Tuke respectively, Foucault perceives both of them as being in some way concerned with surveillance, judgement and a domain of uniformity. The asylum subjects madness to an endless trial and provides in the asylum police, magistrates and torturers. Moreover, the asylum provides the consolidation of the medicalisation of madness. Foucault regards this medicalisation as the most fundamental step not only in the subjugation of the difference and ambiguity that is madness, but also in the move towards bio-politics and the

carceral society. For in the asylum itself the physician becomes the essential figure. As the wise man the physician acts not only as warder in charge of entry but converts the asylum into a medical space. And 'if the medical personage could isolate madness, it was not because he knew it, but because he mastered it'. (See esp. p.269-272). The theme of medicalisation is drawn out in The Birth of the Clinic where Foucault claims that medical space penetrates social space, and, in language that would not be out of place in Discipline and Punish, he argues that 'one began to conceive of a generalised presence of doctors whose intersecting gazes form a network and exercise at every point in space, and at every moment in time, a constant, mobile, differentiated supervision' (p.31). This manifested itself in several ways, from the placing of doctors around the country, to the growing need for statistical supervision of health based on registration of births and deaths, right down to the demand that every citizen be informed of medical knowledge. And of course medicine works directly on the body.

33. Witness his comment that 'the whole point of the project [of HS] lies in a re-elaboration of the theory of power' in 'The History of Sexuality' P/K p.187; Cousins & Hussain op.cit. p.229.

34. 'Two Lectures' P/K p.88; also HS p.82-3.

35. 'Truth and Power' P/K p.121; also HS p.91; see G. Rose, Dialectic of Nihilism: Post-Structuralism and Law (Oxford, Blackwell, 1984), p.191-2.

36. 'Truth and Power' P/K p.122.

37. 'Two Lectures' P/K p.102; see also p.105.

38. This is true of his later work too, as for example when he describes the shift to governmentality as a shift away from sovereignty to discipline, 'Governmentality' in The Foucault Effect op.cit. p.103.

39. DP p.194.

40. 'Truth and Power' P/K p.119.

41. HS p.144.

42. 'Truth and Power' P/K p.119; DP p.194; see also 'Two Lectures' P/K p.89-92, 102-3.

43. HS p.5, 131.

44. 'Body/Power' P/K p.59; 'Power and Sex' PPC p.113; 'Two Lectures' P/K p.90-1.

45. HS p.140-1. Foucault does in fact make explicit use of the concept 'repression' himself - see for example his suggestion that the events of May 68 showed that the communication of knowledge functions as a double repression, and that his own work on prisons is a struggle against repression, in 'Revolutionary Action: "Until

Now" in Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault, edited by D. Bouchard (Oxford, Basil Blackwell, 1977). For an argument concerning Foucault's own 'repressive hypothesis' see J. Baudrillard, Forget Foucault (New York, Semiotext(e), 1987) and R. Keat, 'The Human Body in Social Theory: Reich, Foucault and the Repressive Hypothesis', Radical Philosophy 42 (1986).

46. DP p.274-5, 218-221; HS p.141, 123-5; 'Two Lectures' P/K p.105; 'The Politics of Crime', Partisan Review Vol.43 No.3 (1976), p.459.

47. DP p.308; see Rose, Dialectic of Nihilism op.cit. p.179.

48. Honneth, Critique of Power op.cit. p.191. In pointing to this structuralist neglect I do not wish to be read as one of those 'half-witted commentators' (The Order of Things [London, Tavistock, 1970] p.xiv) who try to force Foucault into such a camp, but he is in danger of protesting too much if he rejects such clear similarities over questions such as agency.

49. M. Ignatieff, 'State, Civil Society and Total Institutions: a Critique of Recent Social Histories of Punishment' in Legality, Ideology and the State, edited by D. Sugarman (London, Academic Press, 1983), p.199-200.

50. DP p.177, 80, 89.

51. Honneth op.cit. p.183-4.

52. DP p.221.

53. HS p.90-1.

54. 'Two Lectures' P/K p.106.

55. 'Governmentality' in The Foucault Effect op.cit. p.95.

56. HS p.109.

57. A. Hunt, Explorations in Law and Society op.cit. ch.12. See also P. Fitzpatrick, The Mythology of Modern Law (London, Routledge, 1992), p.152; J. Minson, Genealogies of Morals: Nietzsche, Foucault, Donzelot and the Eccentricity of Ethics (London, Macmillan, 1985); A. Hussain, 'Foucault's History of Sexuality' m/f Vol.5 No.6 (1981).

58. DP p.222-3; see also p.177, 231-2.

59. Ibid. p.304.

60. Ibid. p.301-2.

61. Ibid. p.22.

62. 'Two Lectures' P/K p.107.

63. J. Habermas, The Philosophical Discourse of Modernity (Cambridge, Polity, 1987), p.290; P. Hirst, Law, Socialism and Democracy (London, Allen & Unwin, 1986), p.50; Honneth, The Critique of Power op.cit. p.197; Cousins & Hussain, Michel Foucault op.cit. p.238; N. Poulantzas, State Power Socialism (London, Verso, 1978), p.77; Rose, Dialectic of Nihilism op.cit.

64. DP p.227-8.

65. Honneth op.cit. p.197. Actually, whilst such a criticism is fairly common, it fails to do justice to some of the subtleties of Foucault's account. For example, whilst it clearly is true that factories, prisons and barracks are different, a difference partly rooted in the place of juridically free/unfree subjects within them, they are different in different ways. Undoubtedly a factory is based on juridically free labour in contrast to the coercion present in making subjects enter prison, but in a barracks one can be both juridically free and yet subject to both a different kind of law - military law - which takes the form of discipline in its own 'courts'. Again, the importance of the military/army to Foucault's analysis becomes clear.

66. DP p.303.

67. HS p.139.

68. DP p.30; see Honneth p.189.

69. G. Rose, Dialectic of Nihilism op.cit. p.178.

70. Of course this does not mean Foucault is beyond addressing legal subjects himself, see for example 'Omnes et Singulatim: Towards a Criticism of "Political Reason"' in The Tanner Lectures on Human Values, Vol.II, edited by S. McMurrin (Cambridge, Cambridge University Press, 1981), esp. at p.235.

71. HS p.144.

72. 'Two Lectures' P/K p.106-7.

73. HS p.89.

74. Poulantzas, State, Power, Socialism op.cit. p.82-4, makes this point, in particular in relation to state power.

75. See Fitzpatrick, The Mythology of Modern Law op.cit. p.128-9; Hussain, 'Foucault's History of Sexuality' op.cit. p.176; Minson, Genealogies of Morals op.cit. p.91.

76. See G. Rose op.cit. p.191-2.

77. HS p.144. The attempt by F. Ewald to defend Foucault on the grounds that the norm is opposed not to law itself but to 'the juridical', the institution of law as the expression of a sovereign's power, is unconvincing. For a start, too many of Foucault's comments do not allow such a separation between law and the juridical, shifting as they do between these two terms. Secondly, Ewald himself makes precisely this kind of shift - witness his comment that 'in the case of bio-power any reference to the juridical is illusory since the language of bio-power is purely technical and has nothing to do with the law as such'. F. Ewald, 'Norms, Discipline and the Law', Representations 30 (1990) esp. p.138 & 159.

78. Hussain op.cit. p.177.

79. On 'legal interpellation' see A. Hunt, Explorations in Law and Society op.cit. ch.11 'Marxism, Law, Legal Theory and Jurisprudence', also available in Dangerous Supplements: Resistance and Renewal in Jurisprudence, edited by P. Fitzpatrick (London, Pluto Press, 1991). It is true that Foucault sometimes recognises the importance of law in regulating norms, especially in relation to sexuality. See for example, 'Confinement, Psychiatry, Prison' and 'Sexual Morality and the Law', PPC, esp. p.205 & 271. However, as far as I am aware he never addresses the question of non-human legal subjects. Given the role of law in constituting and administering these this is a profound omission. For example, from the 1830s the legal nature of the share began to be reconceptualised, resulting in its constitution as property in its own right. No longer tied to the physical assets of a company the ground was laid for the easy transferability of shares. One outcome was that shareholders are separate from their companies, no longer forming 'themselves into' a company but forming companies, objects external to them (the shift can be traced in the wording of the 1856 and 1862 Companies Acts; whereas the former regarded persons as *forming themselves* into an incorporated company, the latter saw persons as forming a company *by them* but not *of them*). The result was the emergence of the joint-stock company and the trading in shares, both fundamental to the development of capitalism. For a discussion see P. Ireland, I. Grigg-Spall & D. Kelly, 'The Conceptual Foundations of Modern Company Law' in Critical Legal Studies, edited by P. Fitzpatrick & A. Hunt (Oxford, Blackwell, 1987).

80. Honneth op.cit. p.166.

81. DP p.184.

82. HS p.136, 138.

83. DP p.144, 303; HS p.118, 126, 144, 149.

84. 'The Political Technology of Individuals' in Technologies of the Self: A Seminar with Michel Foucault, edited by L. Martin, H. Gutman & P. Hutton (London, Tavistock, 1988), p.162.

85. G. Kay & J. Mott, Political Order and the Law of Labour (London, Macmillan, 1982), p.134.

86. O. Kahn-Freund, Labour and the Law (London, Stevens, 1983), p.34; B. Roshier & H. Teff, Law and Society in England (London, Tavistock, 1980), p.166-7.

87. HS p.109.

88. Poulantzas, State, Power, Socialism op.cit. p.77. Alternative accounts of the birth of the prison draw this out, for example M. Ignatieff, A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850 (London, Penguin, 1989). See also Honneth, Critique of Power op.cit. p.173; A. Honneth & H. Joas, Social Action and Human Nature (Cambridge University Press, 1988), p.148.

89. DP p.211. Foucault's later attempt to redress the balance by talking of the 'disciplinarization of the state' (Lecture, College de France, 1978) is difficult to accept given its apparent focus on the operations of apparatuses such as the civil service. See C. Gordon, 'Governmental Rationality: An Introduction' The Foucault Effect op.cit. p.27.

90. M. Walzer, 'The Politics of Michel Foucault' in Foucault: A Critical Reader op.cit. p.54; Poulantzas op.cit. p.44.

91. Compare the work of Carl Schmitt, especially The Concept of the Political (Rutgers University Press, 1976); A. Arato & J. Cohen, Civil Society and Political Theory (London, MIT Press, 1992), p.285-6; G. Rose Dialectic of Nihilism op.cit. p.178.

92. 'Governmentality' in The Foucault Effect op.cit. especially p.102-3.

93. 'History of Systems of Thought' op.cit. p.354. The lecture on 'Governmentality' took place in February 1978; this lecture on 'The History of Systems of Thought' took place between 1978 and 1979.

94. See C. Gordon ibid. p.299, and Gordon, 'Governmental Rationality: An Introduction', The Foucault Effect op.cit. p.27; also see M. Dean, Critical and Effective Histories op.cit. p.176.

95. Ibid, where Foucault castigates those whose work rests on the assumption that the state has a unity and a rigorous functionality. Elsewhere he writes that the state is 'nothing more than the mobile effect of a multiple regime of governmentality' Liberation 30 June 1984, quoted in C. Gordon, 'The Soul of the Citizen: Max Weber and Michel Foucault on Rationality and Government' in Max Weber, Rationality and Modernity, edited by S. Whimster & S. Lash (London, Allen Unwin, 1987), p.304. It should also be pointed out here that 'tactics' must assume an agent, despite Foucault's rejection of the issue of agency.

96. 'Omnes et Singulatum' op.cit. p.246-9. See also 'The Political Technology of Individuals' in Technologies of the Self: A Seminar with Michel Foucault, edited by L. Martin, H. Gutman & P. Hutton op.cit. and 'The Subject and Power', Afterword to Dreyfus and Rabinow, Michel Foucault op.cit. p.215. This theme is

developed by J. Donzelot, The Policing of Families: Welfare Versus the State (London, Hutchinson, 1979) and P. Pasquino in 'Theatrum Politicum: The Genealogy of Capital - Police and the State of Prosperity', Ideology and Consciousness 4 (1978), reprinted, but with extensive revisions, in The Foucault Effect op.cit.

97. DP p.215-6.

98. See Dean, Critical and Effective Histories op.cit. p.153; Gordon, 'The Soul of the Citizen' op.cit. p.299.

99. Foucault, 'The Ethic of Care for the Self as a Practice of Freedom' in The Final Foucault, edited by J. Bernauer & D. Rasmussen (London, MIT Press, 1988). The extent to which it is the 'final Foucault' is suggested by the fact that this essay was apparently reworked and edited twice by Foucault before publication - see T. McCarthy, Ideals and Illusions: On Reconstruction and Deconstruction in Contemporary Critical Theory (London, MIT Press, 1991), p.223 note 48. Also see 'The Subject and Power' Afterword to Dreyfus and Rabinow, Michel Foucault op.cit. p.224. See also 'The Confession of the Flesh' P/K p.208.

100. Dews, Logics of Disintegration op.cit. p.166; F. Lentricchia, Ariel and the Police op.cit. p.48.

101. DP p.211, 298, 303. On 'the social body' generally in DP see p. 78, 79, 80, 82, 89, 90, 92, 94, 99, 131, 184, 207, 208, 209, 213, 214, 231, 298, 301; 'Body/Power' P/K p.55, 'Prison Talk' P/K p.39 and 'The Subject and Power' in Dreyfus and Rabinow, Michel Foucault op.cit. p.226.

102. 'Power and Strategies' P/K p.142; see also 'The History of Sexuality' in the same volume p.187.

103. P. Pasquino, 'Theatrum Politicum' op.cit. p.52 (p.116 of The Foucault Effect).

104. 'The Politics of Crime', Partisan Review Vol.43 No.3 (1976), p.453-9; see also 'Questions on Geography' P/K p.73, 'The Discourse on Power' in Remarks on Marx op.cit. p.167-171 and the passages cited in D. Macey, The Lives of Michel Foucault (London, Hutchinson, 1993), p.385. Of course on the one hand Foucault is quite right - the Nazis and Soviets did adopt methods developed in liberal democracies, the Soviets did leave a whole range of networks of power unchanged - but to conclude from this that one should not seek to distinguish between these regimes or forms of state is absurd. In fact Foucault is forced into this not so much because of the reasons he outlines, but because without the state-civil society distinction he has no conceptual tools for making the kind of distinction required. Given Foucault's rejection of this distinction, his conception of police, and now his suggestion that because his concern is with events up to 1849 he cannot be criticised for not distinguishing between totalitarian and non-totalitarian regimes since in the eighteenth century totalitarian states did not exist ('The Discourse on Power' Remarks on Marx op.cit.p.167-8) one is tempted

to describe him in terms similar to those he uses to describe Sartre. Just as he saw fit to suggest that The Critique of Dialectical Reason is 'the magnificent and pathetic effort of a nineteenth-century man to conceive of the twentieth century' (quoted in D. Eribon Michel Foucault [London, Faber, 1991] p.161) so we might say that Foucault often appears to be an eighteenth century man trying to conceive of the twentieth century.

That aside, this difficulty also accounts for his sloppy use of 'fascism' on a number of occasions: whilst describing Deleuze and Guattari's work as a strategic adversary of fascism, he also suggests it is directed against not only the fascism of Hitler and Mussolini, but also 'the fascism in us all, in our heads and in our everyday behaviour, the fascism that causes us to love power, to desire the very thing that dominates and exploits us'. 'Preface' to G. Deleuze & F. Guattari, Anti-Oedipus: Capitalism and Schizophrenia (London, Athlone, 1984). Elsewhere he suggests that 'we all have a fascism in our heads' ('Two Lectures' P/K p.99, and see p.139-40). See also the comments on the 'popular' response to the murder of a small girl, in Macey p.304-5. Yet at the same time he objects to a petition on the grounds that it refers to West Germany as fascist (Macey p.394) and regards as 'grotesque' the implication that Gaullism is analogous to Nazism (J. Miller, The Passion of Michel Foucault [London, Harper Collins, 1993], p.185). Much of this confusion is due to the intellectual atmosphere at the time, in particular vis a vis the 'new philosophes'. For a discussion see Miller p.238-40, but especially P. Dews, 'The "Nouvelle Philosophie" and Foucault', Economy and Society, Vol.8 (1979). The point here is that given Foucault's rejection of the state-civil society distinction, he lacks the conceptual tools to develop an adequate understanding of fascism. Moreover, given the centrality of the demise of torture in Foucault's account of the birth of the prison and thus modern power, it is surely significant that it is precisely in fascistic regimes that torture has been reinstated in the twentieth century. See Horkheimer and Adorno, Dialectic of Enlightenment (London, Verso, 1979), p.288; also E. Peters, Torture (Oxford, Basil Blackwell, 1985), ch.4.

105. See J. Lea, 'Discipline and Capitalist Development' in Capitalism and the Rule of Law: From Deviancy Theory to Marxism, edited by B. Fine et.al. (London, Hutchinson, 1979), p.88-9.

106. Dews op.cit. p.187.

107. See Dews op.cit. p.188; J. Donzelot The Policing of Families op.cit. p.xxvi, and the 'Foreword' by G. Deleuze p.ix; C. Gordon, 'Governmental Rationality: An Introduction' op.cit. p.27-9; G. Procacci, 'Social Economy and the Government of Poverty', Ideology and Consciousness, 4 (1978), reprinted in The Foucault Effect op.cit. p.167); B. Smart, 'On Discipline and Social Regulation: A Review of Foucault's Genealogical Analysis' in The Power to Punish: Contemporary Penalty and Social Analysis, edited by D. Garland & P. Young (Aldershot, Gower, 1983), p.80.

108. E. Laclau & C. Mouffe, Hegemony and Socialist Strategy: Towards a Radical Democratic Politics (London, Verso, 1985), p.152-5.

109. N. Mouzelis, 'Marxism or Post-Marxism?', New Left Review 167 (1988), p.119-20.
110. P. Osborne, 'Radicalism Without Limit? Discourse, Democracy and the Politics of Identity' in Socialism and the Limits of Liberalism, edited by P. Osborne (London, Verso, 1991), p.213.
111. J. Habermas, The Philosophical Discourse of Modernity op.cit. p.242; see also J. Minson, Genealogies of Morals op.cit. p.80. This supposedly unsociological conception is welcomed by some, see for example B. Smart, 'On Discipline and Social Regulation' op.cit. p.80.
112. DP p.131.
113. J. Donzelot, The Policing of Families op.cit.; L'Invention du Social: Essai sur le declin des passions politiques (Paris, Fayard, 1984), ch.3 of which has appeared as 'The Promotion of the Social' Economy and Society Vol.17 No.3 (1988), reprinted in Foucault's New Domains, edited by M. Gane & T. Johnson (London, Routledge, 1993); 'The Poverty of Political Culture' Ideology and Consciousness 5 (1979); 'The Mobilization of Society' in The Foucault Effect op.cit. N. Rose, Governing the Soul: The Shaping of the Private Self (London, Routledge, 1989); 'The Psychological Complex: Mental Measurement and Social Administration' Ideology and Consciousness 5 (1979); 'Beyond the Public/Private Division: Law, Power and the Family' in Critical Legal Studies, edited by P. Fitzpatrick & A. Hunt (Oxford, Basil Blackwell, 1987); 'Government, Authority and Expertise in Advanced Liberalism' Economy and Society Vol.22 No.3 (1993); also N. Rose and P. Miller, 'Political Power Beyond the State: Problematics of Government' British Journal of Sociology Vol.43 No.2 (1992) and 'Governing Economic Life' Economy and Society Vol.19 No.1 (1990) reprinted in Foucault's New Domains op.cit.
114. Donzelot, The Policing of Families op.cit. p.55.
115. Rose, Governing the Soul op.cit. p.127; see also 'Political Power Beyond the State' op.cit. p.181.
116. Rose, Governing the Soul op.cit. p.128; compare his comment at p.70 of 'Beyond the Public/Private Division' op.cit.
117. Rose *ibid.* p.5.
118. Donzelot, The Policing of Families op.cit. p.8, 94.
119. In similar fashion Rose and Miller, 'Governing Economic Life', suggest that governmentality is to augment wealth production without drawing out some of the implications of this, even at a very basic level, eg what is 'wealth' and how is it produced?
120. M. Barrett & M. McIntosh, The Anti-Social Family (London, Verso, 1982), p.101-103.

121. Rose, 'Beyond the Public/Private Division' p.68, 70; Donzelot op.cit. p.227. Given Donzelot's claims about women as the central axis around which the social apparatuses work it is unsurprising that this has been subject to serious criticisms by feminist writers. See Barrett & McIntosh op.cit. Also see the favourable review of Donzelot by P. Hirst, 'The Genesis of the Social' in Politics and Power 3 (London, Routledge, 1981) and the consequent criticisms by F. Bennett et. al., 'Feminists - the Degenerates of the Social?' in the same issue. See also J. Minson, Genealogies of Morals op.cit. ch.9.
122. Donzelot, 'The Poverty of Political Culture' op.cit. p.82; Rose, Governing the Soul op.cit. p.5 and Rose and Miller, 'Political Power Beyond the State' op.cit. p.189.
123. Donzelot ibid. p.82, 'The Mobilization of Society' op.cit. p.173.
124. Rose and Miller 'Political Power Beyond the State' op.cit. p.191-2.
125. Governing the Soul op.cit p.125-7.
126. Rose, 'The Psychological Complex: Mental Measurement and Social Administration' op.cit. p.60.
127. Rose and Miller, 'Political Power Beyond the State' op.cit. p.189.
128. 'The Ethic of Care for the Self as a Practice of Freedom' in The Final Foucault op.cit. p.12; HS p.95.
129. 'Power and Sex' PPC p.123.
130. See for example M. Berman, All That is Solid Melts Into Air (London, Verso, 1983), p.34-5; Said op.cit. p.245; T. Benton, 'Post-Structuralist Critiques of Marxism and the Contradictions of Althusser' in Ideas From France: The Legacy of French Theory, edited by L. Appignanesi (London, free Association, 1989), p.100.
131. N. Fraser, 'Foucault on Modern Power: Empirical Insights and Normative Confusions', Praxis International 1 (1981), p.283, reprinted in her Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory (Cambridge, Polity, 1989), p.29. Such criticism is fast becoming *the* standard criticism of Foucault. See also R.J. Bernstein, 'Foucault: Critique as a Philosophical Ethos' in Philosophical Interventions in the Unfinished Project of Enlightenment, edited by A. Honneth, T. McCarthy, C. Offe & A. Wellmer (London, MIT Press, 1992); P. Dews, 'Foucault and the Frankfurt School' in Ideas From France, edited by L. Appignanesi, ibid. p.75-8; J. Habermas, The Philosophical Discourse of Modernity op.cit. p. 284; T. McCarthy, Ideals and Illusions op.cit. p.58; C. Taylor 'Foucault on Freedom and Truth' and M. Walzer, 'The Politics of Michel Foucault', both in Foucault: A Critical Reader op.cit.; J. Grimshaw, 'Practices of Freedom' in Up Against Foucault: Explorations of Some Tensions Between Foucault and Feminism, edited by C. Ramazanoglu (London, Routledge, 1993) p.55; D. Nikolinakos.

‘Foucault’s Ethical Quandry’, Telos 83 (1990). Countless more references could be given.

132. HS p.157; ‘The History of Sexuality’ P/K p.191; ‘The Ethic of Care for the Self as a Practice of Freedom’ op.cit.; ‘On the Genealogy of Ethics: An Overview of Work in Progress’ in P. Rabinow (ed.) The Foucault Reader (London, Penguin, 1984). Also see A. Thacker, ‘Foucault’s Aesthetics of Existence’ Radical Philosophy 63 (1993).

133. ‘Power and Strategies’ P/K p.137-8. Questioned on the issue of the ‘plebs’ Foucault evades the issue - see ‘On Popular Justice: A Discussion with Maoists’ P/K p.22. See also R. Comay, ‘Excavating the Repressive Hypothesis: Aporias of Liberation in Foucault’, Telos 67 (1986). For the link with the ‘new philosophes’ in the use of ‘plebs’ see P. Dews, ‘The “Nouvelle Philosophie” and Foucault’ op.cit.

134. See Fraser op.cit.

135. J. Seigel, ‘Avoiding the Subject’ op.cit. p.297. This could explain why the very late Foucault talks of an ethical ‘practice of liberty’ tied to the ‘care of the self’ based around the idea of a ‘free subject’, and his beliefs in the ‘freedom of people’ and that ‘all of us are living and thinking subjects’ - see the interviews ‘The Ethic of Care for the Self as a Practice of Freedom’ in The Final Foucault op.cit. p.12, and ‘Truth, Power, Self: An Interview’ in Technologies of the Self op.cit. p.14. This in turn may explain why some have suggested Foucault at least partly overcomes his ethical quandary in his later work. See also P. Dews, ‘The Return of the Subject in Late Foucault’, Radical Philosophy 51 (1989).

136. DP p.220.

137. Poulantzas, State, Power, Socialism op.cit. p.149. Whilst Poulantzas is rightly critical of the ‘groundless’ affirmation of the plebs (p.150) it should be noted that he often resorts to such formulations himself - see note 70 to Chapter Four, below.

138. Cohen & Arato, Civil Society and Political Theory op.cit. p.291.

139. ‘Two Lectures’ P/K p.82-5, also DP p.27-8; see Dews, Logics of Disintegration op.cit. p.186-192. On genealogy and critique see T. McCarthy, ‘The Critique of Impure Reason’, Political Theory, Vol.18 No.3 (1990).

140. M. Frank, What is Neostucturalism? (Minneapolis, University of Minnesota Press, 1989), p.184.

141. Marx, Letter to Ruge Sept. 1843 in Early Writings.

142. As Dews notes, (Logics of Disintegration, p.189), a spontaneity which Foucault himself can scarcely believe.

143. See ‘What is Enlightenment?’ in The Foucault Reader op.cit.

144. 'The Minimalist Self' PPC op.cit. p.14.

145. A. Callinicos, Against Postmodernism: A Marxist Critique (Cambridge, Polity, 1989), p.90-1.

146. 'The Confession of the Flesh' P/K p.208.

147. See for example 'Power and Sex' in PPC. It is partly for this reason of course that Foucault himself engaged in numerous 'micro-struggles' at 'the capillaries', the details of which are now amply covered by three biographies of Foucault: D. Eribon, Michel Foucault, D. Macey, The Lives of Michel Foucault and J. Miller, The Passion of Michel Foucault, all op.cit. Of course the fact of Foucault's involvement in various struggles throughout his career makes the reasons as to why one should resist even more pertinent. To take but one example, sympathetic commentators often cite Foucault's own work with the *Groupe d'Information sur les Prisons* (GIP) as a product of the power of Foucault's work. Sheridan, for example, claims that the GIP set out not to speak for the prisoners but to make it possible for prisoners to speak for themselves, and that the riots in French prisons in 1972 were evidence of the GIPs effectiveness, adding that this showed the promise of a 'new kind of politics' based on 'real situations' (A. Sheridan, Michel Foucault [London, Tavistock, 1980], p.130). Yet there is a danger of a simplistic reading of the life in terms of the work and vice versa. For at other times Foucault is critical of interpreting such actions as attempting to 'reform' the institution or 'resist' the power. Of the GIP he claims that 'the ultimate goal of its interventions was not to extend the visiting rights of prisoners to 30 minutes or to procure flush toilets for the cells, but to question the social and moral distinction between the innocent and the guilty', clearly viewing the project as part of a more philosophical questioning of the moral distinctions made when dealing with crime than a 'reforming' body. That is in 1971; in 1977 he is openly critical of those involved in reform around prisons. The reform movement he claims 'has allowed itself to be penetrated by a whole naive, archaic ideology which makes the criminal at once into the innocent victim'. Admittedly this is a criticism of those 'intellectuals' such as social workers who are separated from the prisoners themselves; but it is also a criticism of those who remain at the level of 'conjunctural struggles' in 'particular sectors'. See Foucault, 'Revolutionary Action: "Until Now"' op.cit. and 'Truth and Power' op.cit. p.130. This leaves those intending to use Foucault's work on power as a 'tool-kit' for local resistance in a difficult position. As Walzer points out, in the prison revolts, with which we might rightly sympathise, the prisoners are not questioning the line between innocence and guilt but are reacting to, drawing our attention to, and hoping to reform, the brutality and inhumanity of the prison conditions and, crucially, the punishments that go far beyond those to which they were legally condemned. That is, the administrative 'infra-law' or 'micro-powers' operating in the prison. And they demand the introduction and enforcement of justice, humanity and, as Walzer adds, what we might wish to call the rule of law (Walzer, 'The Politics of Michel Foucault' in Foucault: A Critical Reader op.cit. p.65).

148. 'Truth and Power' P/K p.122-3.

149. See C. Castoriadis, Political and Social Writings, Volume 3 ((Minneapolis, University of Minnesota Press, 1993), p.274-5.
150. H. Marcuse, Negations (Harmondsworth, Penguin, 1972), p.86.
151. 'Is It Useless to Revolt?', Philosophy and Social Criticism Vol.8 No.1 (1981).
152. See F. Lentricchia, Ariel and the Police op.cit.; T. Benton, 'Post-Structuralist Critiques of Marxism and the Contradictions of Althusser' in Ideas From France, edited by L. Appignanesi op.cit. p.100; A. Callinicos, Is There a Future For Marxism? (London, Macmillan, 1982), p.161-2 and R.J. Bernstein, 'Foucault: Critique as a Philosophical Ethos' op.cit. Of course Foucault cannot provide a goal for resistance even in liberal terms such as 'justice', arguing that any future societies ruled according to justice would be utopian, for 'the idea of justice in itself is an idea which in effect has been invented and put to work in different societies as an instrument of a certain political and economic power' (in debate with Chomsky, quoted in Said, The World, The Text and The Critic op.cit. p.246). Likewise he rejects any analysis based on law or the rule of law (see note 147 above).
153. Poulantzas, State, Power, Socialism op.cit. p.151.
154. 'Truth and Power' P/K p.114.
155. G. Rose, Dialectic of Nihilism op.cit. p.178.
156. 'Two Lectures' P/K p.90.
157. See P. Pasquino, 'Political Theory of War and Peace: Foucault and the History of Modern Political Theory', Economy and Society Vol.22 No.1 (1993). Compare the comments on Hobbes in 'Two Lectures' P/K p.97.
158. G. Rose op.cit. p.200.
159. Quoted in Pasquino, 'Political Theory of War and Peace' op.cit. p.83.
160. See Honneth, Critique of Power op.cit. ch.5.
161. DP p.131.
162. DP p.308. Likewise he suggests that there were 'revolts at the level of the body, against the very body of the prison' (DP) but it is not at all clear what this actually means.
163. P. O'Brien, The Promise of Punishment: Prisons in Nineteenth Century France (New Jersey, Princeton University Press, 1982), p.81, but see ch.3 generally; D. Garland, Punishment and Welfare: A History of Penal Strategies (Aldershot, Gower, 1986), ch.6.

Part III: Administration

Introduction

In March 1794 a passport was issued to Robert Listen Esquire, the last passport to be personally signed by the monarch. From this time the King's signature was no longer needed in the granting of permission to travel. We might say, following Foucault, that the King's hand has been symbolically chopped off; the royal sovereign no longer permits or forbids travel to foreign destinations. But since that date passports have been issued by the executive, by the Secretary of State. Although the monarch's permission is no longer needed, is indeed irrelevant, the granting of the permission to travel is now an act of administration. The focus therefore needs to shift from the monarch as the embodiment of power to the state in general, and from the monarch as the embodiment of sovereignty to the process of administration as an expression of state power. The sovereignty embodied in the monarch and illustrated in the granting of the permission to travel to particular persons has been replaced by an administrative decision which applies universally unless an individual has broken the law or is suspected of doing so.

The language of particularity and universality is useful here. Hegel regarded Fichte as going a little too far in suggesting that suspect persons not only have their descriptions on their passports but also have their likenesses painted on them.¹ Yet the outbreak of war in 1914 saw the introduction of photographs on passports, and the new style passports from 1915 required a description of the holder too. Hegel was criticising Fichte for being overly 'constructive' in his philosophical concerns: giving good advice on such detail was beyond the concern of philosophy. But the passport is one of the significant political-administrative forms that has emerged in the period under consideration, and therefore requires our attention.

This is so because the possession of a passport signifies the possession of citizenship. Modern citizens possess a range of certificates which, beyond their particular functions, serve to certify the holder as 'citizen': the birth certificate, insurance number, marriage certificate, passport. The passport serves as documentary evidence that one is a *bona fide* citizen. The passport in general is a universal symbol of citizenship; the photograph, description and signature are a recognition of particularity. The granting of the passport is the granting of a right (to travel) dependent upon the fulfilling of duties (behaving as a good citizen). It

is dependent upon the satisfactory fulfilment of duty that the right remains valid.² Yet the decision as to whether one is a good citizen is a legal one; here we encounter the mythic integration of law and administration, an integration that will be explored in the following chapters.

The passport, along with other documents such as those named above, is of course a product and function of the state, a form of state administration, a system for registering individual citizens. It is through such systems that we can recognise the role of the state in the constitution of individual subjects. The absence of the monarch's signature does not, *pace* Foucault, signal the death of sovereignty. Rather it signals the development of rational bureaucratic processes for the constitution and administration of the individual subject of modern capitalism. The point of Part III will be to show how this constitution and administration is a function of, and is therefore premised upon the existence of, the state.

In 1982 Foucault wrote that his work over the previous twenty years had dealt with the modes through which human beings are transformed into subjects, suggesting that it is not so much power but the subject which has been the general theme of his research.³ The concern here is not so much with the subject but with (state) power. One of the arguments will be that the human being is constituted as a subject by the state through administrative mechanisms. Moreover, it will also be argued that the working class was constituted by the state. The two processes involved here - the constitution of the individual subject and the constitution of collective working class organisations - are in fact parts of the same process, in which the state plays the fundamental determining role. The significant feature of modern citizenship is that it marks an individual as a member of society. As Turner notes, becoming a citizen involves a process of *getting in to society*.⁴ This much was pointed out by T.H. Marshall: 'citizenship is a status bestowed on those who are full members of a community'.⁵ It is partly for this reason that the issue of citizenship has been such a vexed one for Marxist theory. As was seen in Chapter One, one of the reasons that Marx believed the working class was the revolutionary class was that it was a class in but not of civil society. It is the partly the development of citizenship that problematises this, for becoming a *bona fide* citizen means taking one's place as a member of civil society. Now, we have encountered

the links between citizenship and civil society (*bürgerliche Gesellschaft*) in Chapter One. In the following two chapters the idea that being a citizen means equally being a 'member' of the state will also be explored. Turner writes that 'in both German and Dutch, there is the option of regarding the citizen as a bourgeois member of the city or regarding the citizen as a member of the state. The citizen as member of the state is bound by the rules and regulations of the emerging nation-state bureaucracy which is committed to order and stability'.⁶ This is a far more fruitful way of thinking about citizenship, involving as it does an expanded state concept and a more complex appreciation of the nature of citizenship. For it is by taking the form of citizens that human individuals could become both subjects of right and objects of administration, a process rooted in the constitutive power of the state and its role in developing and sustaining bourgeois society.

Yet at the same time, in its constitution of trade unions as the legal subjectivity of the working class the state also recognised the social power of collective labour; by specifying the nature and form that this power could legally take the state shaped working class collective action into a series of organs which, while able to formally express the social power of labour, also limit it in accordance with state policy. Moreover, as if to place the triumphal icing on the cake of victory, the state then uses trade unions as part of the administrative process.

By 1918 the English working class had been incorporated into civil society and the state. But the argument here does not succumb to the myth of working class passivity or rest on the idea of a supine working class. One of the functions of the following two chapters will to show how this conception of working class passivity is misguided. It will be argued, following Thompson, that the working class was an active agent in its own making,⁷ but, *pace* Thompson, that the working class was not 'made' until at least the 1870s. The struggles involved in its making also resulted in a reshaping of the institutional structures of the British state. The development of the administrative forms that shaped individual and collective subjectivity in turn meant that the development of the state was structured through the process of class struggle. In other words, it will be argued that the constitution of the working class was central to the development of the state. If the working class was 'made', it was so by the state; but the state was 'made' by the working

class through its struggles. The only way to incorporate the English working class was for the state to alter its institutional form accordingly. Administration will therefore be read as the outcome of struggles within civil society and their transformation into another form. Administration, then, acts as the fulcrum around which both the working class and the modern state were ordered.

The incorporation of the working class occurred between 1832 and 1918. For Foucault, as we saw, the 1830s saw the culmination of the development of 'modern' power, with 22 January 1840 given as the completion date of the carceral system. In Britain the 1830s was also the origins of fundamental changes in the operation of power. Employing a Foucauldian curlicue we can register the burning down of the Houses of Parliament in October 1834 as the symbolic date of these changes. For this can be read as the beginning of the new era in the development of the British state, one that was to involve it in the development of new political forms in its attempt to administer the working class. For 1834 also sees the emergence of the administrative mechanisms introduced through the new Poor Law, the very mechanisms that constitute the heart of political administration.

Within this period the process of Parliamentary reform resulting in the transformation of Britain into a liberal democratic regime is of obvious importance, and later changes, notably the Second and Third Reform Acts and the Representation of the People Acts, would have a profound effect on the position of the working class within civil society and the state. Despite the fact that the Reform Act of 1832 related solely to the bourgeoisie, and then only a small proportion of it, it was a crucial moment in the process of consolidating the bourgeois social order and towards a different exercise of power. But the Reform Act and its aftermath also serves as an entry-point into a broader debate concerning the theoretical issues involved in thinking about the state and the working class. Included in this is the concept of bourgeois revolution and the idea that the British state followed a 'peculiar' route in its 'transformation' into a modern capitalist polity. In Chapter Four it will be argued that the concern over the concept bourgeois revolution is rooted in a confusion regarding what this concept actually refers to. A narrow reading, focusing only on particular moments of political change and reducing the 'political' to a limited number of institutions, is likely to

result in the claim that Britain never experienced a bourgeois revolution, or experienced an incomplete one; the bourgeois revolution was either *absent* or it *failed*. To this end the lack of bourgeois personnel in Parliament, government and the Cabinet after 1832 can be introduced in support of the claim. However, we will seek to overcome such confusions in two ways. One will be to rethink the category bourgeois revolution such that it refers not so much to particular moments of political transformation, but to the process whereby social and economic relations are transformed into the relations of private property, commodity production and wage-labour. Within this broad process one can think of particular political moments of transformation in which the state is adapted accordingly. From this it follows that capitalism can work with a number of different state forms; if this is so then the ‘peculiarities’ of English, German or any other countries history are not peculiarities at all.

The second way will be to expand the concept of the political such that it is not restricted to Parliament, government and the Cabinet but also includes the mechanisms of administration. This allows the changes introduced in 1832 to be related to the wider context of the emergence of administrative mechanisms concerned with policing the working class, mechanisms often outside immediate Parliamentary control that are *quasi-legislative* and *quasi-judicial* in their nature. This allows the process of liberal democratisation, in which the working class is incorporated as individual citizens into the body politic, to be analysed alongside the process in which there emerge mechanisms for administering working class citizens, both individually and collectively. The focus is on the institutional mechanisms for administering poverty and work, the very heart of the existence of the working class, for it is these two aspects that most concern the state and the power of social labour. The three-fold purpose of political administration traced in Chapter Five - the fashioning of labour, the subsumption of struggle and the constitution of legal subjects - indicates this most clearly.

Chapter Four

The Normality of the English:

Rethinking State and Class in Britain 1832-1918

'Bourgeois Revolution' and the 'Peculiarities' of the English

The political atmosphere between 1830 and 1832 was heavily imbued with the threat of revolutionary violence. The July days in France reminded the bourgeoisie of the ever-present potential of violent overthrow, a reminder given impetus by Belgium's rising against the Dutch, Poland's rising against Russia and a threatened revolution in Italy. The power of these events to produce images in the minds of the ruling class in Britain was exacerbated by Captain Swing, in which rural workers made their presence felt through a period of machine breaking.¹ Moreover, there was the increasingly important question of reforming a Parliament widely felt to be corrupt, with 'rotten boroughs' widespread. Powerful groups had developed in favour of reform, regarding themselves at the forefront of the economic development of Britain yet without any significant political power. Their discontent was aided by the fact that they still suffered from the after-effects of the 1826 depression, and experienced continual industrial troubles ever since. The strength of the reform movement was assisted by the Catholic emancipation of the previous years which had torn apart the Conservative faction in Parliament, leading to the debilitation of the one body most vehemently opposed to reform. Finally there was the fall of Wellington's government, in November 1830, said to be largely due to his Burkean criticism of ideas of reform, and its replacement with a government committed to reform under Lord Grey.

In this historical conjuncture the Duke of Wellington, who had spoken against reform, was to suggest that 'we are assured that there will be a revolution in the country. Produced by what? By force and violence'.² Although it is correct to therefore suggest that social discontent fed movements for parliamentary reform,³ it is important to note that this discontent was scattered among different classes and existed for different reasons. The discontent of the working class, both urban and

rural, was very different in nature to the discontent of the middle classes, due to their positions within the capitalist process. The point however is that the threat of working class revolution could be used by (middle class) reformers to substantiate their claims that if reform did not occur then revolution would. The working class itself, given its relatively unformed state,⁴ could be kept down with direct force and the law. But the middle class could use the threat of the revolutionary potential of the working class in order to strengthen its own demands for reform. In this way reform in 1832, has its roots in a particular perception of the working class, a perception to a great extent shared by the various factions of the middle and ruling class. We will return to this point below.

The introduction of the Reform Bill into Parliament was justified not on the grounds of a remodelling of the system, but to remove what were regarded as its defects and abuses. There is no need to discuss the intricacies of the actual bill, nor its stormy passage involving the two Houses and the monarchy. Grey himself recognised that the key elements of the Bill - the disenfranchisement of the rotten boroughs, the enfranchisement of the new towns, and the common £10 household franchise - were important for two main reasons: they could be achieved within the framework of the old system, and they would suffice to create a polity which embraced the middle classes. These two features illustrate the extent to which the Bill was an attempt to reconcile the growing influential forces in society to the old aristocratic system. The increasing economic power of the middle classes could be recognised and balanced by their political influence.

One interpretation of the Reform Act involves the assumption that it was intended to shift power to the middle class, an interpretation which took hold even in the nineteenth century. Macaulay, writing in 1831, suggests that the Act was 'to admit the middle class to a large and direct share in the Representation, without any violent shock to the institutions of our country', a point reiterated by Bagehot.⁵ This is the interpretation that has become commonplace. Yet at the Parliamentary level there was no great change in the sociological composition of the House of Commons - landed families continued to occupy a large majority of seats;⁶ the power of the Lords remained, despite its symbolic defeat in the passage of the Act. Similarly there was enormous differences in the sizes of constituencies. Bribery and

corruption not only failed to decrease, but in fact possibly increased as personal, familial and local contact remained the major factor at elections.⁷ Thus the Act appears to have changed very little. Given the emotional scenes in Parliament when the Bill was being debated, the involvement of the King in trying to have Wellington form a government so as to avoid reform, an election fought almost solely on the issue of reform and the background of unrest, the Act itself can appear to be far more revolutionary than it actually was. As Gash writes,

The exaggerated hopes and fears that surrounded the Reform Bill owed much to the turbulence of its passage. Only gradually was it realized that the act was not the subversive event it seemed in 1831. Its importance was largely psychological: it satisfied a pent-up demand... Divorced from its contemporary context and analysed dispassionately, the Reform Act represented no more than a clumsy but vigorous hacking at the old structure to make it a roughly more acceptable shape.⁸

Here we encounter the fundamental issue concerning the nature and implications of the Reform Act: was it a reform for the bourgeois class, *the completion of the bourgeois revolution*, or merely a hacking at the old aristocratic structure to avoid bourgeois power?

One of the ways 1832 has been considered within historical materialism is as the completion of the bourgeois revolution in Britain, a revolution started in 1640. The concept 'bourgeois revolution' developed not with Marx and Engels, but with Lenin and Plekhanov at the end of the nineteenth and beginning of the twentieth centuries.⁹ Faced with the possibility of a revolution in Tsarist Russia, they understood this as a bourgeois revolution since they believed a bourgeois period was necessary in the historical transition from feudalism to socialism. From this it has become customary to speak of bourgeois revolutions, in which the bourgeois class is said to have ousted the aristocracy from power in order to instill capitalist relations of production; the French revolution is taken as the classic example. To fit the British case into this framework the Reform Act of 1832 is said to have been the moment when the British bourgeoisie ousted the old aristocracy from the seat of power, consolidating the process started in 1640.

In his review of Guizot's book on the English revolution Marx criticises Guizot for implying that English history comes to an end with the constitutional monarchy,

because 'in reality...the momentous development and transformation of bourgeois society in England only began with the consolidation of the constitutional monarchy'. After this 'a new bourgeoisie of colossal proportions arose' which 'became so omnipotent that, *even before it gained direct political power as a result of the Reform Bill*, it forced its opponents to legislate in its interests and in accordance with *its* requirements'.¹⁰ However, such an analysis has been subjected to criticism: were 1832 a victory for the bourgeoisie, it is suggested, then Parliaments after this would have far greater numbers of industrialists, financiers, merchants and so on; since it did not then 1832 could not have been a victory for the bourgeoisie. A great deal of empirical evidence can be used to sustain this claim. It has been suggested that the first election after the reform act produced no more merchants, and may have produced less, than several Parliaments before 1833,¹¹ and that throughout the 1840s approximately 71% of the Parliament was aristocratic or from the landed classes.¹² In relation to the Cabinet, even the most 'democratic' of cabinets contained only a minority of 'non-aristocrats' (5 out of 13) and between 1833 and 1892 the average number of aristocrats was 71%.¹³ Because of this claims have been made concerning the 'myth' of the triumphant middle class. 'The British House of Commons had been reformed in 1832, but in truth the eighteenth century still stalked many of the constituencies of Great Britain and Ireland'.¹⁴ D.C. Moore claims that the 'concession' thesis has polemical value, but as an analytical tool for understanding 1832 it has limited use. He suggests that 1832 was widely perceived at the time not as a concession but as a 'cure' for the deficiencies of the electoral system, in particular in relation to constituencies, for what was happening was the breakdown of representation of local communities.¹⁵

In fact, the paradoxical outcome of the 1832 Act was not lost on Marx, nor many other commentators of the time. Despite the claim made by Marx that the Reform Act allowed the bourgeoisie to gain political power, in other writings on British politics the ambiguous nature of the post-1832 period shows through. He claims for example that the British Constitution is

only an antiquated and obsolete compromise between the bourgeoisie, which rules in actual practice, although *not officially*, in all the decisive spheres of

bourgeois society, and the landed aristocracy, which forms the *official government*.¹⁶

In other words, the Reform gave the bourgeoisie recognition as the ruling class as long as the business of government remained in the hands of the landed aristocracy. 1832 was therefore a compromise between the two classes, largely to avoid a confrontation with the working class,¹⁷ a compromise in which power is delegated from the truly ruling interests - the bourgeoisie - to another class - the aristocracy - to do the governing for it.¹⁸ Perry Anderson and Tom Nairn have used this ambiguity as the basis for their analysis of the 'peculiar' nature of the English route to industrial capitalism.¹⁹ The lack of direct bourgeois power after the 1832 Reform Bill is explained by Anderson and Nairn through a different conceptualisation of the relationship between the bourgeois and aristocratic classes. The reason the House of Commons was not rapidly taken over by representatives of the bourgeoisie, they suggest, is because after 1832 there was a gradual convergence of the two classes which functioned to cut the working class off from society. Given the particular social order in England of a hierarchy of social estates within a societal pyramid involving deference to a patrician elite based on personal (or quasi-personal) relations and modes of domination, the convergence of the two classes allowed this form of rule to continue. The two classes undergo a 'systematic symbiosis', they are 'horizontally intertwined', they 'fuse', they 'amalgamate' they become a 'detotalized totality'.

The end result of these convergent mutations was the eventual creation of a single hegemonic class, distinguished by a perpetually recreated virtual homogeneity and actual - determinate - porousness...The aristocracy became - and remained - the vanguard of the bourgeoisie.²⁰

Crucially, within this the bourgeoisie remain the supine class. Nairn suggests that concession or compromise between the bourgeoisie and aristocracy was not possible.

No 'compromise' or 'alliance'...was, in fact, possible as between contrasting civilisations. No conscious tactical arrangement, no deal lasting for a season, was conceivable between forces of this complexity and magnitude. Amalgamation was the only real possibility, a fusion of different classes and

their diverse cultures into one social order capable of guaranteeing social stability and keeping the proletariat in its place.²¹

E.P. Thompson calls this a dialectical trick, in which two forces that are so incompatible that no compromise was possible can still become fused.²² In fact, as shall be suggested below, given Anderson and Nairn's conceptualisation and the theoretical framework that they use, such a fusion is in fact possible.

Anderson and Nairn argue that this is the distinctive feature of the development of British society, and indeed continues to be the fundamental stumbling block to the development of both British capitalism *vis a vis* the rest of the capitalist order,²³ and the development of a working class movement beyond a merely reformist labourism. For example, Anderson suggests that the rise of imperialism from the end of the 1880s helped to consolidate the 'preternaturally hierarchical character of the traditional social order, and in particular its typical *model of leadership*'. Imperialism 'not only preserved but reinforced the already pronounced personality type of the governing class: aristocratic, amateur, and "normatively" agrarian'.²⁴ But because by this time the aristocracy and bourgeoisie had fused/intertwined etc. these characteristics became the defining characteristics of the 'ruling bloc', creating 'lasting contours' and stamping a 'lasting imprint' on social life, thereby shaping the consciousness of the whole of British society, the working class and socialist groups included.

It is argued that this fusion and hegemony was possible because there was a strong common interest between the two groups, consisting of three facets: the successful expansion and defence of Empire; the degree of already existing homogeneity between the two groups; and their common potential threat of the working class. Nairn suggests that this last feature is the key to understanding society-state relations from the 1840s.²⁵

Now, one of the central features of Anderson and Nairn's account is that it rests on the idea that Britain followed a 'peculiar' route to capitalism, in turn resting on the idea that there is an normal route. The normal route has at its heart the concept bourgeois revolution, or, more generally, the bourgeois paradigm.²⁶ The paradigm is that the route to industrial capitalism is one in which the social forces of capitalist property ownership gradually replace those of feudalism. In this the

bourgeois revolution consists of the necessary modernisation of the state, that is, its liberal democratisation and growth of rational bureaucratic procedures, within which the bourgeoisie can assume power. For Anderson and Nairn British history is peculiar in that it never experienced the required bourgeois revolution; its transformation was mediated by the aristocracy, a mediation which allowed for the persistence of the ancien regime, and which in turn has haunted all aspects of British politics and society ever since.

There are a number of problems with such claims. First, as E.P. Thompson points out, this uses a normative conception of bourgeois revolution, the idea that there is a pure model against which the British route failed to match up; the result is the cutting of one's history to fit the model.²⁷ Yet the model fails to match up with any country whatsoever, as witnessed by the fact that the model allows one to discuss the 'peculiarities' of the Germans as much as the peculiarities of the English.²⁸ Indeed, it can be argued that the whole of Europe is peculiar, in the sense that the ancien regime persisted well after the supposed 'bourgeois revolution(s)'.²⁹

Anderson and Nairn's argument that there was a symbiotic fusion of the aristocratic and bourgeois classes to form a single hegemonic class with aristocratic 'virtues' appears to provide a useful means of understanding why after 1832 the bastions of power in the British state were not flooded with the 'new men' of the rising middle classes, but the argument is undermined by the lack of specificity in their anatomy of classes in this period: 'landed gentry', 'aristocracy' 'agrarian capitalists', 'landed classes' are all used without being clearly delineated. Thompson points out that in fact the eighteenth century contained a capitalist agricultural class formed from the gentry, combining urban and rural lifestyles.³⁰ If this is so then Anderson and Nairn's two classes which could not compromise but which could fuse are in fact a number of classes whose form of existence is fundamentally different, a difference rooted in their economic positions. But Anderson and Nairn can argue for this fusion because for the most part their treatment of classes is at the level of ideology and consciousness. Central to this treatment is the concept hegemony.

The power structure of English society today can be most accurately described as an elastic and all-embracing hegemonic order. Hegemony was defined by Gramsci as the dominance of one social bloc over another, not simply by means of force or wealth, but by a wider authority whose ultimate resource is cultural... The hegemonic class is the primary determinant of consciousness, character and customs throughout the society.³¹

This hegemony retains strong elements of feudal-aristocratic traditions. The fusion of aristocracy and bourgeoisie sustains an essentially feudal consciousness which in turn has an ideological offshoot of traditionalism with a leadership style that is patrician and amateurish. Yet, as Poulantzas notes, this reduces Gramsci's concept of hegemony to 'class consciousness' and implies that this class consciousness becomes imposed upon the society as a whole. Reducing hegemony to ideology and consciousness in this way makes it *epistemologically possible* for Anderson and Nairn to argue that the aristocracy and the bourgeoisie fuse to become one historic bloc within which the aristocracy is dominant.³² Moreover, this understanding of hegemony affects Anderson and Nairn's conceptualisation of the working class. For them, the English working class is a 'corporate class'. 'If hegemonic class can be defined as one which imposes its own ends and vision on society as a whole, a corporate class is conversely one which pursues its own ends within a social totality whose overall determination lies outside it'. The English working class is 'distinguished by an immovable class consciousness and almost no hegemonic ideology'.³³ This has its origins in the 'peculiarities' of the English route, for as the first industrial working class, the English working class had no examples to follow; it 'matured' too early to grasp revolutionary Marxism and was subject to the 'fusion' of the dominant classes above. Given this set of historical and theoretical determinants the working class absorbed the ideological norms developed by the hegemonic class. It was distracted away from conscious engagement, became deferential in its outlook, accepted the patrician style of leadership, and reinforced the notion of tradition in which classes become perceived as fixed estates. For Nairn 'the corporative aspect of working class politics meant that it was weak in ideological leadership, and relatively unaware of the problematic of power'.³⁴ As can be seen, the interpretation of 'corporate' here

follows logically from the interpretation of 'hegemony' and the conceptualisation of the working class as of an essentially passive object, acted on but with little capacity for acting on other classes or the social and political institutions. After the defeat of Chartism the working class 'went through a kind of prolonged catatonic withdrawal', it became 'numbed' and 'docile', 'consciously subordinate'. It could then be quite easily absorbed as a 'defeated' force.³⁵ Because of this the history of labour organisations is a history of minor defensive groupings such as insurance societies and trade unions, or one large grouping, the Labour Party, which went on to pursue a series of major historical failures; even the claimed successes of the Labour movement, such as universal welfare provision, are attributed to liberalism.³⁶

Structure, Struggle and Working Class Incorporation

We will return to the Anderson-Nairn thesis to consider more directly the question of the state, revolution and the nature of the political. First, however, we must examine the question of struggle and working class incorporation. Our argument will be that the working class was incorporated, that this incorporation was of a class *in struggle* rather than a supine body. But this raises the question as to what is involved in the concept of incorporation?

The general thrust of the Anderson-Nairn thesis, that the working class has been supine, deferential and lacking a hegemonic ideology is replicated in other approaches to the working class and the development of state power in Britain. Here we will consider two approaches - social control theory and that which focuses on the 'labour aristocracy'. These will be shown to lack theoretical specificity, and in some cases empirical and historical specificity too; in the worst instance they appear as concepts in search of theories.³⁷

Social Control

Those writers who seek to utilise a 'social control theory'³⁸ start from the basic problem of how social order is maintained against a potentially revolutionary working class. The question is therefore implicitly about the nature of struggle and the absence of revolution in Britain. The answer given, in its most general form,

is that the working class has been 'controlled', a control which takes place not only through the forces of coercion such as the police, but through a whole range of social institutions. Thus J.R.Hay writes that

To Marx the conflict between the classes over the control of the means of production is fundamental to the development of society and the process of social change. It is, therefore, essential for the ruling class in any society to possess a battery of economic, social, political, legal and ideological controls to maintain their hold over the property on which their position depends.³⁹

Occasionally a reference is found in the primary literature to reinforce the claim - such as G.R. Askwith's Cabinet paper on the industrial unrest in 1911 in which he writes that given industrial unrest 'we are driven to the conclusion that some effort should be made to maintain control'⁴⁰ - but such direct uses of the very word 'control' in the primary literature are rare, and even if they were frequent in itself this would not necessitate the use of the concept to understand those changes. Instead the concept works in a catch-all way, where because it is assumed that working class struggle needs to be 'controlled', *any* new social policy or the development of any new institution is read as contributing to this 'control'. In an essay on 'Social Control and the Modernisation of Social Policy 1890-1929', for example, John Brown writes that

The continuing social control function of social policy is most obvious in the coercive power of the law... More intangible constraints on conduct, powerful though difficult to trace, came from contact with the bureaucracies which administered the new policies.⁴¹

Once this is stated it only remains for a broad history of the social policy of the period to be outlined, for it is already decided it is about 'control', with the consequence that *any* attempt by the bourgeoisie to influence, regulate, administer or police the working class is understood as 'social control'.⁴² We will return to this point.

Lacking any real specificity, 'social control' either fails to explain that which it seeks to, or it produces confusion rather than meaningful analysis. For example, 'upper class', 'middle class', 'ruling classes', 'rich', 'employers' are all used, with

varying frequency. Yet at the same time differences between various fractions of the 'ruling class' (or perhaps the differences are between these groups themselves?) are overlooked, such as in the late-nineteenth century when some sections were demanding that labour camps be established to solve the problem of unemployment. In an essay on the Salvation Army, Victor Bailey argues the Army is an institution designed to inculcate control upon the working class, and yet he also makes it clear that the Army's attempt to do this, especially through its attack on working class culture, was also resisted by the local elites. So here we have an agency of social control which is being *resisted* by the local ruling classes, yet we are not told why.⁴³

There is also a lack of historical specificity. Hay, for example, claims that 'certain forms of control seem specific to certain social formations or stages of society'. This sounds plausible but once again is left at such a level of generality that it does not actually explain anything. Even developing the point into the claim that 'social control can be exerted in different ideological forms from repression to the pure liberal individualism so common in the early twentieth century' is equally of little help. For if the ruling class must exert control then it would seem obvious that this control will change throughout history.⁴⁴

The key problem it would seem is that, as Stedman Jones writes,

It is not difficult to demonstrate that a casual usage of 'social control' metaphors leads to non-explanation and incoherence. There is no political or ideological institution which could not in some way be interpreted as an agency of social control.⁴⁵

As such it is unsurprising that the empirical work fails to do it much justice.

Furthermore, the concept is so out of place within a historical materialist analysis that there is no way of integrating the concept theoretically with concepts such as class and state. Yet what Stedman Jones calls the concept's 'incompatible sociological tradition' has in fact been welcomed as one of its positive features by some. Donajkowski, for example, is happy pointing to the concept's origin within a conservative sociological tradition, whilst Moorhouse, denying that the concept necessitates a functionalist approach, accepts that other theoretical traditions may use it.⁴⁶ The problems outlined here suggest that this theoretical openness, far

from being the basis of a healthy eclecticism, is in fact the grounds for theoretical confusion. In particular, it becomes difficult to distinguish between state mechanisms and institutions, and those of civil society. It is not that we need to supplement the concept with historical and political material, as its defenders claim,⁴⁷ for even then its theoretical vacuity remains: because all institutions are (or can be?) institutions of control, there seems little point in distinguishing between them - they are simply institutions of social control. Indeed, there is no way to distinguish between them. This reproduces some of the conceptual errors that emerge from the work of Althusser and Foucault, for 'social control' comes to function as a sociological alternative to 'ideological apparatus' and 'power'. The same could also be said for the way 'hegemony' is used in its neo-Gramscian mode. Each works at a level of generality that often blurs the distinction between state and civil society. Hegemony at least implies an agent, and a class one at that. Social control, as a form of sociological systems functionalism, merely serves to obliterate any concern with agency whatsoever.⁴⁸

For this reason it is not surprising to find that there is a tendency to fall back on Foucault's 'disciplinary power' and/or Gramsci's 'hegemony' as theoretical supports for 'social control' arguments. Hay claims that the type of social control he is examining produces dominance and legitimacy, and suggests that this is what he takes Gramsci to mean by 'bourgeois hegemony', whilst Donajgradzki suggests that Gramsci's concept of 'hegemony' is compatible with the social control concept.⁴⁹ It is possible for them to suggest this because ultimately what 'hegemony' and 'social control' mean for them is 'ideological domination', broadly conceived. As such the words become interchangeable.⁵⁰ Now, one function of this link between social control and hegemony is the effect it has of making the concept of social control appear compatible with a historical materialist approach. Indeed, the shift from the former concept to the later is often performed via a fleeting hint of Marxist analysis. In his essay on education and social control, for example, Richard Johnson suggests that

Educational expertise...does fit the description 'social control'; especially if, for 'social', we read 'class'. and, for 'control', 'transformation'. But of all the available theorisations, not excluding Althusser's 'reproduction', it is

Gramsci's concept 'hegemony' that provides the greatest insight, especially in relation to 'state'.⁵¹

This would appear to be a long route to an account of hegemony, in the process turning a far stronger and theoretically more complex concept than 'social control' into a purely descriptive category.⁵²

In respect of Foucault, Melossi seeks to show how the development of a panoptic form of power constitutes a form of 'social control without the state'. The shift away from Leviathan and sovereignty towards disciplinary power was simultaneously a shift in social control. With the onset of democracy one gets control based on consent - 'social control' proper - a more powerful form of control because it produces behaviour rather than prohibits it.⁵³ Melossi's attempt to develop an account of power based on the social control concept thus serves to remove the state - conceptualised as an absolutist monolithic power - from historical and political analysis.⁵⁴ To this end he introduces the idea of the public versus the private, only to reject it as a conceptual tool, suggesting that almost every aspect of social life is administered through a *mixture* of private and public channels.⁵⁵ This explains his claim that instead of the concept of the state we ought to consider the state of social control, based upon the essentially Foucauldian idea concerning the mastery of oneself.⁵⁶

The Labour Aristocracy

Whilst the concept labour aristocracy initially appears to have a truer Marxist provenance than social control, it too is subject to the same vagaries and indeterminacy as found in social control and the neo-Gramscian usage of hegemony. The intention behind the use of the concept is clear: to explain the failure of the British working class to effect a revolution. In his study of Oldham, John Foster argues that the bourgeoisie used the labour aristocracy as a stabilising influence. The 'social resolution' of the process of restabilisation was '*worked out* in terms of industrial organisation. Its key component was the creation of a privileged grade within the labour force - the labour aristocracy - and it was around this dimension of inequality that social structure later crystallised'.⁵⁷ Similarly Robert Gray suggests that 'the labour aristocracy...implanted accommodative

responses to capitalism, and subsequently transmitted them to a broader class movement... [It] mediated accommodative responses to capitalist society'.⁵⁸

Such claims have their roots in Engels and Lenin. Writing in 1885 Engels drew attention to the advances of skilled workers organised in unions, suggesting that they 'form an aristocracy of the working class', as indicated by their 'relatively comfortable position' which they 'accept...as final'. Because of this they are 'very nice people indeed nowadays to deal with, for any sensible capitalists in particular and for the whole capitalist class in general'.⁵⁹ In his work on imperialism Lenin draws out the implications of Engels' suggestions, claiming that the aristocracy of labour constitutes a stratum of workers who 'turn bourgeois'. Superior in earnings and philistine in outlook the labour aristocracy becomes the 'prop of the bourgeoisie', the 'labour lieutenants of the capitalist class' and the 'real channels of reformism and chauvinism'. 'Bribed' by the capitalists the labour aristocrats, for Lenin, are the 'real agents of the bourgeoisie in the working class'.⁶⁰

Whilst it may initially appear clear what or who constitutes the labour aristocracy and the political implications of their aristocratic nature - they do deals with the capitalist class - this masks a welter of difficulties. As Gregor McLellan points out, it is unclear who is bought off: 'labour leaders', the 'upper stratum of the labour aristocracy', the 'upper strata of the workers', the 'bulk of the membership of co-operatives, trade unions, sporting clubs and numerous sects'.⁶¹ This problem has continued throughout the work of those who seek to use the labour aristocracy as an explanatory tool. Whilst Hobsbawm identifies six criteria with which we can establish which workers belong to the labour aristocracy - the level and regularity of earnings, prospects of social security, conditions of work, relations with strata above and below, general living conditions, and future prospects - he points to the first of these as the most important and about which we can gain comprehensive information.⁶² In contrast, Foster points to the authoritative (and thus authoritarian) position of the aristocrats within the production process; Gray is concerned with the process by which the labour aristocracy helped form an essentially reformist set of working class political structures; Geoffrey Crossick suggests that there is 'more to a labour aristocracy than high earnings' and that we should look for the formation of a 'social stratum' with 'exclusive values, patterns

of behaviour and social aspirations'; Francis Hearn, after pointing to the economic and industrial developments that gave rise to the labour aristocracy, suggests that it is a status group and that we should identify it according to leisure and consumption patterns (yet he later points to the crucial political effects this had, such as the Reform Act of 1867); finally, Tony Lane focuses on the 'top-hatted trade unionist' forming the heart of the 'labour establishment' and giving it a permanent and stable leadership.⁶³

A related difficulty occurs in specifying the historical period in which the labour aristocracy became important. For Engels it was clearly in the second half of the nineteenth century, for Lenin, the imperialist phase of capitalist development. Identifying the 'classical period' as 1840-1890, Hobsbawm also suggests that the labour aristocracy can be found in some form 'throughout the century' and that 'its elements already existed' before 1840; he also discusses it in the period 1890 to 1914.⁶⁴ In contrast, whilst Foster follows Lenin in relating the labour aristocracy to imperialism, his suggestion that the decline of pre-modern forms of social control (such as Church-going) implies that 'the need for a network of establishment henchmen *inside* the labour community' occurred much earlier.⁶⁵ Likewise, Thompson writes of both an old and a new labour aristocracy in 1800-1850.⁶⁶

As a concept 'labour aristocracy' is inflated to the degree that it becomes almost vacuous - almost any aspect of the working class that appears somehow different to the rest of that class can be conceptually sectioned off, rendered 'aristocratic' and held responsible for the 'failings' of the class as a whole. At best the concept lacks clarity; at worst it is contradictory. As Stedman Jones writes, the use of the idea of a labour aristocracy 'has been ambiguous and unsatisfactory. Its status is uncertain and it has been employed at will, descriptively, polemically or theoretically, without ever finding a firm anchorage'. He goes on to add that it is questionable whether there could ever be a definitive theory of the labour aristocracy, for it is not evident what such a theory would be aiming to answer.⁶⁷ Yet in a sense it *is* evident what such a theory would be aiming to answer, namely, the failure of the British working class to effect a revolution and, more generally, to attempt some clarification of the nature of the working class in advanced

capitalism and the outcome of its struggles. It is the concept's vacuity that stops it from even beginning to do this. Now, it is precisely this vacuity that also explains the tendency amongst some writers who employ the 'labour aristocracy' to also use 'social control' or 'hegemony'. Foster's extensive and impressive empirical research into the nature of the labour aristocracy cannot mask the theoretical weaknesses that require the social control concept to be brought forth in order to strengthen the argument concerning the labour aristocracy. His specifying of the mechanisms of social control in the pre-industrial period is designed to assist the argument that as these declined a new form of control is needed; enter the labour aristocracy. 'To sum up the situation in 1914. The labour aristocracy, as a means of control, was quite different to what it had been fifty years before'.⁶⁸ In exactly the same way as the account of 'social control' given above has indicated, this serves to obscure, even obliterate, some fundamental differences, not least between the 'labour aristocracy' and institutions of the state.

One weakness from which approaches which use either social control and labour aristocracy suffer is that whilst they both rest on the assumption of struggle and working class incorporation, they have difficulty integrating class struggle into their accounts. On the one hand, struggle is always present in the accounts, on the other it is always absent, in that it is rare to find it dealt with head on. Because the working class has been incorporated it is assumed that this must have occurred because the working class *allowed* itself to be so, regardless of the existence of struggle; the assumption, as found in Anderson and Nairn, is that the working class is essentially supine.

However, whilst it may appear that the suggestion that the working class has been incorporated implies a supine body⁶⁹ this is not the case; quite the opposite, in fact. For the working class was incorporated because it was *not* supine, because it was engaged in struggles, of varying intensities, which meant it had to be incorporated lest it realise its revolutionary potential. After all, why would the bourgeoisie bother to incorporate a supine working class? It is true that most accounts of incorporation suggest a supine working class, but this is because they fail to address the relationship between struggle and incorporation, and thus the political structures this gave rise to. For it is not that the working class was

struggling *for* incorporation into the structures of the British state, *but that in its struggle for recognition it found itself incorporated.*

This is a problem wider than the question of working class incorporation, involving as it does the necessity of conceptualising (working class) struggle *and* (state) structures, the issues that form part of the core of Marxism and which have been dealt with often in highly nuanced ways, with writers tending to stress either struggle or structure.⁷⁰ But these need to be related in a concrete way. The British state, faced with struggling classes, succeeded in adapting itself to pre-empt revolutionary change by subsuming class struggle under the state through the development of administrative structures and mechanisms. The growth of the state from the late-nineteenth centuries can be traced to the incorporation of working class struggle into its very structures, as increasing elements of civil society found themselves structured, restructured and submerged. With typical flexibility and a seemingly endless ability to adapt itself, the British state and constitution responded by creating a space within itself for this purpose. *In the very act of being incorporated the working class was constituted; the making of the working class was its incorporation.* Not only does this mean that such a making can therefore only be understood, *pace* Thompson,⁷¹ as occurring after 1832 and, *pace* Hobsbawm,⁷² through the development in state power in Britain. It also signals a shift away from approaches which presuppose the working class as already constituted before the state ‘acts’ on it.

Yet the other moment of this constitution was the (re)constitution of the modern state. Far from being supine, in the process of its struggle for recognition the working class forced the emergence of new state structures, and through these a reordering, far more fundamental than that forced by the bourgeoisie in its struggle, of the relation between state and civil society. Thus we can say that although the working class was constituted by the state, the state itself was constituted through class struggle. Poulantzas is right in claiming that ‘struggles are inscribed in the institutional materiality of the state, even though they are not concluded in it; it is a materiality that carries the traces of these muted and multiform struggles’.⁷³ This insight can be strengthened by positing administration as the outcome of working class struggle. As Kay and Mott note, ‘Administration is working-class power *post*

festum; working-class political victories captured and formalised at their moment of triumph'.⁷⁴ In these administrative structures the state appropriates and nullifies the struggle of the working class; as such they are the fossilised remnants of class struggle; they are working class struggle abolished and preserved.⁷⁵ Born of the struggle of the working class these structures are then left with the task of administering that same class, a task performed in relation to both collective organisations of the working class and its decomposed elements known as 'citizens'. It is therefore through the very process of struggle that the working class and not just its 'aristocratic' elements, now most definitely of civil society as well as in it, also finds its struggles incorporated into the state, transformed into administrative structures and turned against it. Thus in its struggle to become a class of civil society, the class discovers itself also to be a class of the state.

To justify these claims we must consider in more detail the development of the state in Britain from 1832. We shall do this by returning briefly to the question of the 'absence' of a revolution in Britain.

Whither the Revolution?

One of the outcomes of the problems concerning the 'normal' and 'peculiar' histories of nation-states is that one may be tempted to reject the concept bourgeois revolution, thereby eliminating any concern with the 'failures' of different national bourgeoisies.⁷⁶ As one writer puts it:

One could dispense with the search for the bourgeois revolution in the Stuart period. One could dispense with the search for failed or absent revolutions in the nineteenth century. If the bourgeoisie was not revolutionary, if it did not seek a revolutionary overthrow of the old regime, it is hardly problematic that such revolutions did not appear. It also means that one can dispense with that angry scolding found in Marxist (and some Scholarly) literature.⁷⁷

However, we shall resist this temptation in favour of moving towards a more sophisticated concept of bourgeois revolution, which enables us to address the persistence of the 'pre-modern' features after 1832 without succumbing to a 'peculiarities' argument. For one of the problems in much of the literature is that bourgeois revolution is taken to refer to an exclusively 'political' event; the very

reason why the French revolution is taken as so important an example. It is this reading that prompts the game of Hunt the Bourgeoisie.⁷⁸ Yet one of the strengths of Marx's own account of revolution in general is his distinction between political and social revolution, in which the former represents a transformation of political power relations and the latter a transformation in the socio-economic relations of production. There seems to be no reason why this distinction cannot be used in thinking about bourgeois revolution. One might think of revolution as both process and moment, a distinction that can be traced in Marx's own work. Whilst Marx undoubtedly describes 1640 and 1789 as revolutionary *moments*, his overall concern, the general thrust of his argument, is of the long *process* by which capitalist relations of production come to dominate. It is for this reason that he points to an 'era of social revolution',⁷⁹ and this provides the key to Marx's comment that the bourgeoisie *rules*⁸⁰ in all the decisive spheres of bourgeois society but allows the aristocracy to do the governing for it.

This would identify bourgeois revolution with the long, slow and often 'silent' process, often across national boundaries, by which a particular mode of production and its concomitant property relations place their stamp on human relations. Within this process one can identify moments of political rupture or crisis in which relations of political power and authority undergo substantial alteration. As Geoff Eley puts it,

Abstractly this means distinguishing between two levels of determination and significance - between the revolution as a specific crises of the state, involving widespread popular mobilisation and a reconstitution of political relationships, and on the other hand the deeper processes of structural change, involving the increasing predominance of the capitalist mode of production.⁸¹

This allows a retention of Marxism's central concern, namely the struggle between exploiting and exploited classes, and the contradictions this gives rise to, a struggle within civil society.

It also allows us to give up the concern over the supposed contradiction between the 1832 Act and the continuation of aristocratic elements. For there is no inconsistency in the Act being an act of reform and yet 'the most aristocratic act

ever offered to the nation'.⁸² It was the most aristocratic act because the aristocracy managed to survive a potentially revolutionary moment unscathed. But the price for avoiding upheaval was to come to terms with bourgeois economic power, the increasing domination of the capitalist process in civil society. For capitalism to triumph the aristocracy and bourgeoisie recognised their common interests *vis a vis* the working class. The chessboard model of the nineteenth century is faulty not only because it perceives of new classes sweeping away the old,⁸³ but because a chessboard model is a space in which only two agencies can operate. As Marx writes,

In every violent movement they [the bourgeoisie] are obliged to appeal to the working class. And if the aristocracy is their vanishing opponent, the working class is their rising enemy. They prefer to compromise with the vanishing opponent rather than to strengthen the arising enemy, to whom the future belongs, by concessions of a more than apparent importance.⁸⁴

It is not so much that 1832 provided a major step to the fusion of aristocracy and bourgeoisie into a detotalised totality in which the style of the aristocracy became the fixed style of the whole of British society, but that it changed the rules of the game, creating a new framework within which the dominant economic classes could function, in particular in counterposition to the working class.⁸⁵ As such the bourgeoisie had no need for direct political power; nor did it lack the courage to make an attempt at this power, as Anderson would have it. As a number of commentators have pointed out, what need had they for politics or courage when they had money.⁸⁶

This point should not be underestimated, for the economic power of the bourgeoisie can and did reap the necessary rewards. Nowhere is this more clearly seen than in the repeal of the corn laws. The laws restricting the import of corn were opposed by manufacturers on the grounds that they led to reduced levels of exports and higher bread prices. The higher prices, rents and tithes meant the corn laws found favour with the farmers and landlords and discontent on the part of industrialists on the grounds of lower trade. The Anti-Corn Law League's campaign for the repeal of the corn laws represents the attempt by free traders to overcome the old protectionism; in this they stood for the rising industrial classes. This turned

into a clash not simply between protection and free trade, but also between the principles of the aristocracy or landed gentry and the bourgeoisie, between the old and the new, tradition and modernity, paternalistic government and the modern state. It was class struggle. It is therefore not surprising that the repeal had a stormy passage through Parliament, given the social make-up outlined above. Peel's recognition that repeal was a politically realistic concession which would avert a much deeper crisis was to many Tories the ultimate betrayal.⁸⁷ Given the nature of Parliament the bourgeoisie could not rely on Parliamentary influence; a Parliament still full of landed interests was clearly not the most sympathetic arena. Thus the Leaguers 'lost their sense of constitutionality' advocating courses of action outside the sphere of Parliament and legality: refusal of taxes, promotion of strikes, the plan to create a liquidity crisis through a demand for gold in return for bankers notes and, ultimately, the threat to use disturbances amongst the working class.⁸⁸

The point of course is that the repeal of the corn laws reveals the 'subordination of the landed interest to the moneyed interest, of property to commerce, of agriculture to manufacturing industry, of the country to the city'.⁸⁹ It was a total victory for the political economy of the bourgeoisie. And ultimately Parliament, regardless of its social make-up, recognised the necessity of this outcome.

Expanding the Concept of the Political: Administration

Amidst all this the question of state administration is notably absent. For Anderson and Nairn the state is dealt with via their concern for the absent or failed bourgeois revolution. But this allows them to forego any detailed analysis of the state, on the grounds that its most significant features are precisely the aspects of the ancien regime. This serves to obscure some of the fundamental developments in state power that occurred in nineteenth century Britain. As Michael Barratt Brown points out, Anderson discusses Bank Charter Acts but not Company Acts, private financing of railways but not the Railway Acts; nor does he address the Enclosure Acts the rise of policing institutions, the administration of the Poor Law.⁹⁰ In other words, the very mechanisms through which civil society was ordered and regulated by the state. In this absence Anderson and Nairn perpetuate the myth of

the nightwatchman state,⁹¹ a myth sustained by, yet itself sustaining, the claim to English peculiarity - 'other' states followed the 'proper' route to centralisation and rational bureaucracy.⁹²

One of the problems that arises from considering bourgeois revolution is that the concern for the lack of political power of the bourgeois class after 1832 focuses on Parliament, government and Cabinets, as the figures given above concerning the continued existence of aristocratic elements indicate. This occurs in both Marxist and non-Marxist accounts. (Sometimes this is supported with an account of ideology and consciousness, as found in Anderson and Nairn). The problem is that it operates with a narrow conception of the political, of the kind found in the Second International discussed in Chapter Two. For just as the revolution in 'bourgeois revolution' is misread as political, so the political is reduced to Parliament. This encourages a Marxist reading of Parliament as 'the arena of genuine class confrontation'.⁹³ Political power is taken to mean the control of legislation through either Parliament, government or Cabinet (or, ideally, all three), with a sideways glance at the operations of the judiciary. Because the bourgeoisie failed to penetrate these institutions their failure to assume political power is taken as read. But whilst these changes were occurring (or not occurring, as the case may be), a parallel set of developments were also taking place: the emergence of new *administrative* mechanisms for the ordering and regulation of civil society in general and the working class in particular. The contention here is that we need an expanded concept of the political that includes administration. This would allow a number of advantages. First, it enables an analysis of these administrative mechanisms and avoids an excessive focus on Parliament. Second, it encourages an exploration of the links between law and administration. Thus an account can be given of the links between the simultaneous emergence of citizens as subjects of right and objects of administration. Third, it encourages us to explore the links and boundaries between Parliament, government, Cabinet and the judiciary, and administration. To facilitate this I will develop the idea that administration is quasi-legislative and quasi-judicial. This allows us to explore the category administration without, *pace* Foucault, losing sight of the state or law, for the 'quasi' is intended to indicate the problem of a boundary. Nor does it encourage

the cruder forms of base-superstructure argument found in some Marxist accounts of law.

One of the outcomes of 1832 was that the aristocratic control over patronage was displaced to Parliament and increasingly centred on party needs. Yet without a hierarchically structured and bureaucratically organised party system controlling backbench and independent MPs - such as was to emerge in the 1870s after the further extension of the franchise - patronage remained disorganised, haphazard and unpredictable; political leaders had next to no control over it. Given that 1832 increased the centrality of Parliament to political life, and began the process of increasing the number of 'commoners' within it, one solution to the problem posed for political leaders by the unpredictable nature of Parliamentary patronage was to shift power from Parliament to the administrative arm of the state.⁹⁴ The 'independent' character of the administrative mechanisms examined in Chapter Five, such as the Poor Law Board, were shaped partly by the reformers' fear of patronage. Here a brief analysis of the emergence of a modern Civil Service provides a useful starting point, and will allow us to introduce some of the arguments concerning administration developed in the following chapter.

Patronage in the Civil Service remained unreformed after 1832 - Trevelyan was to write that 'patronage in all its varied forms is the great abuse and scandal of the present age' - and constituted the main driving force behind Gladstone's decision to reform the Civil Service.⁹⁵ Yet in his correspondence at the time Gladstone also claims that his efforts at reforming the Civil Service are his 'contribution to Parliamentary reform'.⁹⁶ In this sense MacDonagh is right to claim that administrative reform was seen as the follow-through to the Reform Act of 1832. However, it is not true to claim that reform was promoted by the middle classes, nor that it was an assault on the ancien regime.⁹⁷ For just as the Reform Act can be seen as a partial defence of aristocracy, so can administrative reform. Gladstone saw his reforms as a means of retaining and reinvigorating the ascendancy of a Coleridgean clerisy. Through the creation of a new Civil service elite to which entry was possible only by exam, for which Oxbridge education was remarkably suited, the reforms were intended to consolidate the links between the higher classes and administrative power. In other words, it was 'a means of extending

confirming, cleansing and legitimising an existing elite'.⁹⁸ It is true that the reforms were intended to win the acceptance of such structures by the rising middle classes - the reforms had nothing if not the air of meritocracy - but they were neither a response to the demands of the middle class nor intended to allow middle class entry into the administration.⁹⁹

Yet the emergence of a modern centralised administrative body in Britain was a contribution to Parliamentary 'reform' in another, more profound way, for in the process of its creation the Civil Service failed to make it on to the statute books, revealing the increasing impotence of Parliament *vis a vis* administration. The Order in Council - an administrative order emanating from the Queens Privy Council - of early 1855 was laid before Parliament, voted down, but implemented anyway, since the implementation did not require Parliamentary approval. In other words, the emergence of centralised administration was itself an act of administration. Moreover the Order, as an instrument drawn up in the Treasury and used to effect increasing executive power, made the Treasury the organ for integrating administration, in the process depriving Parliament of any direct control over the commissioners created by the Order.¹⁰⁰

This link between the ruling class, administrative power and the extension of Parliamentary representation can also be seen in later changes. The full logic of the Northcote-Trevelyan Report was only carried through in 1870, once it became clear that the doors of Parliament would have to be opened further still, even to the working class. As the franchise was extended yet further in 1867, making Parliament even more representative (at least in the quantitative sense) and creating a much larger electorate which, because of its size and social make-up was neither predictable nor controllable through patronage, so there occurred a further shift in power from Parliament to administration. First, the 1870 Order in Council - approved by Cabinet without Parliamentary approval - rendered competition more widespread throughout the Service and extended Treasury control over Civil Service regulation and, second, an amendment to the Standing Orders of the House of Commons allowed public spending to be increased without Parliamentary approval.¹⁰¹ Moreover, when the post of Head of the Civil Service emerged after 1867 it was a Permanent Secretary (to the Treasury) who assumed it.¹⁰² Finally

the introduction of universal male suffrage (alongside an organised labour movement) in 1918 occurred simultaneously with the consolidation of Treasury control over the administrative machinery.¹⁰³

The issue here is not the relative control over the administrative machinery by the bourgeois and aristocratic classes, but the institutional form and political thrust of state power. The Gladstonian conception of an administrative elite was intended as a *defence of the class state* - the 1854 reforms were to 'strengthen and multiply the ties between the higher classes and the possession of administrative power'¹⁰⁴ - a defence intended to win the bourgeoisie away from any links it might forge with the working class. Moreover, it also indicates the extent to which an attempt at developing the conceptual tools for an analysis of state power should not be limited to Parliamentary mechanisms. For many of the changes that occurred in the organisation of state power in Britain from 1832 occurred outside Parliament, or at least at its edges, in a series of administrative structures. The threefold purpose of administration from 1834 traced in the following chapter - the fashioning of a modern labour force, the subsumption of working class struggles into the state and the constitution of legal subjects - is one which unites both aristocracy and bourgeoisie. In relation to the first purpose, it will be argued that the working class was made by the state - it was formed and structured by the capitalist state in the late-nineteenth and early twentieth centuries. To this end there developed a series of administrative innovations through which the working class was structured and ordered. In Britain such administration was rooted in the state. In relation to the latter purpose, administration will be argued to be a product of class struggle, the mechanisms whereby the state subsumes working class revolutionary will and transforms it into a bureaucratic form.

Using the category of 'administration' in this way makes the historians' debate, concerning the continued aristocratic elements within Parliament, merely a historians' debate.¹⁰⁵ Likewise, the excessive concern with the 'feudal' or 'pre-modern' characteristics of the British state misses one of its key features, perfectly surmised by Walter Bagehot, that the archaic continuities within the British constitution act as a dignified mask for its highly efficient and rational core.¹⁰⁶ From 1832 onwards an increasing amount of power was exercised not

by Parliament, nor for that matter other traditional political bodies such as the judiciary, but by quasi-legislative and quasi-judicial administrative bodies. From 1834 many central policy-making bodies, whose decisions had the force of law, grew outside of the immediate Parliamentary arena. Here we will focus upon the development of the administration of subsistence by the state. This will begin with an analysis of the 1834 New Poor Law, for it is this that established the model for much of the subsequent development. The comment of Nassau Senior to de Tocqueville that 'The Poor Law Amendment Act was a heavier blow to the aristocracy than the Reform Act'¹⁰⁷ is telling, for the long term effect of the New Poor Law, it will be argued, was the creation of the centralised administrative structures through which, firstly, the bourgeois social revolution could be consolidated and, secondly, through which later working class struggles could be administered and negated.

Whilst the New Poor Law will be shown to have its roots in the concerns, discontents and desires of the bourgeoisie, later developments in the administration of subsistence were a response to working class struggle. In this sense, administration will be shown to be the prime institutional mechanism for the mediation of struggle. Yet in the process of developing administrative mechanisms for this purpose, the institutional structure of the modern state was fundamentally altered, and with it the institutional relationship between state and civil society. It will therefore be argued that the state was equally 'made', through the process of class struggle.

Chapter Five

Political Administration in Britain 1832-1918:

The Fashioning of Labour Power, the Subsumption of Struggle and the Constitution of Legal Subjects

The New Poor Law, Labour and State Administration

Political administration from 1834 was concerned first and foremost with the condition of the working class. Pauperism, or indigence, was regarded as ‘the social problem’, because as non-labour it undermined the very principle of the bourgeois social order. Thus one writer at the time described pauperism as ‘one of the great calamities which can afflict civil society, since, with certain exceptions, it generates everything that is noxious, criminal and vicious in the civil body’.¹ As a problem pauperism was not new - political theorists and administrators had long recognised it as of central concern - but from the early nineteenth century it was regarded as a suitable object for political administration. Before this can be illustrated we need to say a little more concerning the distinction between poverty and pauperism.

It is misleading to describe the New Poor Law as concerned with poverty; quite the opposite is true. Some thinkers, especially those behind the Poor Law, recognise the intimate connection between poverty and wealth, understanding that the eradication of poverty would be the eradication of wealth. This has its roots partly in Bentham’s work on the Old Poor Law, where he claims that

Poverty is the state of everyone who, in order to obtain *subsistence*, is forced to have recourse to *labour*. Indigence is the state of him who, being destitute of property...is at the same time, either unable to labour, or unable, even for labour, to procure the supply of which he happens to be in want.²

Given that Bentham’s followers were the principle architects behind the Poor Law Amendment Act of 1834, most notably Edwin Chadwick, it is unsurprising that this understanding of poverty and indigence forms one of the intellectual presuppositions behind the Act. The Report on the Poor Law states that

In no part of Europe except England has it been thought fit that the provision, whether compulsory or voluntary, should it be applied to more than the relief of *indigence*, the state of a person unable to labour, or unable to obtain, in return for his labour, the means of subsistence. It has never been deemed expedient that the provision should extend to the relief of *poverty*; that is, the state of one who, in order to obtain a mere subsistence, is forced to have recourse to labour.³

Two factors are important here. First, the distinction between poverty and pauperism, and the recognition of the necessity of poverty for labour and therefore wealth, implies the recognition of the need for a class of persons who remain within poverty, who have to labour for their subsistence; in other words the necessity of the working class and for its condition to be one of poverty.⁴ Second, there is the growing recognition of the importance of administering this aspect of civil society politically. What follows from the distinction between poverty and pauperism, from the understanding that poverty is 'natural' to capitalism, and from the threat to civil society posed by pauperism, is the belief that pauperism can be administered by the state. But this administration is also *indirectly* the administration of poverty, and therefore of the working class. For this to be achieved civil society needed to be reconstituted through a series of appropriate administrative policing mechanisms.

Although the Report has been described as 'wildly unhistorical' and 'wildly unstatistical',⁵ the methodology severely lacking - the 'evidence' for the most part taking the form of written submissions from various parishes, visits by the Commissioners to the parishes, and some information on Poor Law practice in foreign countries - and the Report was written before all the evidence had arrived, never mind studied,⁶ it remains a crucial document for an understanding of the development of political administration in the period. For regardless of whether what the Commissioners believed was the truth or not, the subsequent legislation was based upon it, and it was written with the authors knowing that subsequent reform would be based upon it. What people thought was happening was, for the purpose of social policy, more important than what was actually happening. Thus the accuracy of the evidence of the Report, its methodological flaws and wildly unhistorical nature are largely irrelevant.⁷

The findings of the Report were that the provision of poor relief was haphazard and confused. Apart from relief within workhouses there was outdoor relief of numerous forms. There was outdoor relief in kind, such as rent, as well as outdoor relief in money - straightforward relief, an allowance in aid of wages, the Roundsman system, employment by the parish, the labour-rate system. In addition there was outdoor relief of the impotent.⁸ Added to this it was administered by over 15,000 parishes. The system was thus regarded as open to abuse, in two significant ways. First, conditions in workhouses were often better than those of poor labourers outside and, second, provision of outdoor relief in aid of wages often meant that labourers reduced their working hours where possible in favour of relief provided by the parish, (with employers often using the existence of relief to keep wages down, on the grounds that low wages will be supported by relief). In other words, the real problem was that the system encouraged idleness, that is, non-labour; it encouraged the avoidance of the very activity that defines one as working class.

The solution consisted of a number of recommendations, not all of which were fully implemented. The first of these was the principle of less eligibility.

The first and most essential of all conditions, a principle which we find universally admitted, even by those whose practice is at variance with it, is that his [the pauper's] situation on the whole shall not be made really or apparently so eligible as the situation of the independent labourer of the lowest class.⁹

Since the belief was that the existing system of poor relief encouraged pauperism by offering generous benefits if one did not work, then a situation should be created whereby they could not/would not wish to do this. A simple reversal of syllogism provided the solution: if men quit the class of labourer to join the more eligible class of pauper then they would quit the class of pauper and join the more eligible class of labourer were the relative conditions to be reversed.¹⁰ Thus relief should provide a standard of living below that of the lowest worker. The Commissioners saw this as the 'dispauperising' of the able-bodied poor¹¹ whereby a broad line of distinction could be drawn between the class of independent labourers and the class of paupers. This line could be drawn and maintained by the

second recommendation, that of providing relief within a workhouse, which would correct the three faults of the system of poor relief: it would remove the 'poor', that is the able-bodied labourer, from poor relief and deal only with the pauper; it would restore the principle of work, so that paupers would work in return for relief; and through the principle of less eligibility the abuses of the Old Poor Law would be removed.

The workhouse would do this because of its conditions. 'The only protection for the parish is to make the parish the hardest taskmaster and the worst paymaster that can be applied to'.¹² The phrase 'less eligibility' is often taken to mean that the conditions of the workhouse must be worse than that of the poorest pauper, and that since the conditions of the poorest pauper were so awful it would be impossible to achieve.¹³ But in fact the early administrators did not conceive of workhouses which were dirty, insanitary, overcrowded and badly built; nor did they wish paupers to be badly fed or clothed.¹⁴ Chadwick, for example, envisaged the workhouse as containing wholesome food, well-ventilated with good accommodation.¹⁵ The workhouses were intended to repel through their discipline, through the monotonous regime, and through the loss of liberty and deprivation of sexual contact.

The third recommendation was to create a central board to overcome the unavoidable discrepancies and corruption created by an administration of 15,000 units. The key feature of the central board was its responsibility for uniformity in the administration.¹⁶

The Act of 1834 itself did not introduce all of these recommendations to the extent desired by Chadwick and his colleagues. A Poor Law Commission was created, but without the powers desired by the Report's authors. It could not compel the newly created Poor Law Unions to build workhouses, despite the centrality of the workhouse to the Act. Moreover the Commission had little power over those Unions which did not co-operate. Fraser notes that 'the Poor Law Commissioner's function was thus supervisory. It could cajole, encourage, reprimand, inspect, but could not compel unions'.¹⁷ The Bill that went through Parliament contained no reference to a workhouse test in the form of less eligibility. And whilst the Bill originally contained the stipulation that allowances

in aid of wages were to cease on 1 June 1835 this clause was later dropped. Instead it was left to the discretion of the Commissioners, who were to issue directives concerning the regulation of outdoor relief. However, the wording of the Bill has been read as implying that the Commissioners were to take the Report as their guiding light,¹⁸ a significant point, as we shall see.

The only area in which the Act was explicit was in the creation of a new politico-administrative structure. The new political forms operated at both local and national level. At the local level there was created a new unit of administration (the Union of Parishes) with an elected tax-raising body to control relief (Boards of Guardians) and to replace the magistracy. At the central level the creation of the Poor Law Commission was a dramatic change. Initially free from Parliamentary or ministerial control, in its attempt at achieving uniformity the Commission operated through an inspectorate.¹⁹ It is only from the 1870s, when the Commission (by then a Board) could impose its will on the Unions, that complete uniformity would be achieved. The point however is that the Poor Law established the political forms and administrative structures essential for the further development of the state in Britain and which became the basis for the period of state-building into the late-nineteenth century and early-twentieth. This is the central claim; to justify it we must first consider some of the central problems in interpreting the New Poor Law.²⁰

The first issue must concern why the New Poor Law developed when it did. Here the central question concerning the relationship between state and civil society is relevant. One way of interpreting the origins of the New Poor Law is to argue that it was a response to the growing social disorder. Commentators have pointed to the series of disturbances in nearly nineteenth century Britain: Luddites, violent strikes in response to bad harvests of 1816-17 and 1819, machine-breakers, the Peterloo demonstration and subsequent killings by the Yeomanry in 1819, and most notably Captain Swing in 1830-32. Thus Ginsberg suggests that

it was the agitation by the agricultural labourers that prompted the appointment in 1832 of a royal commission, which produced the famous Poor Law Report of 1834 and led to the passing of the Poor Law Amendment Act.²¹

Whilst other writers do not draw such a close connection between working class discontent and the Poor Law, causal links between these events and the 1834 Act are often implied.²²

Now, such an analysis appears to be suited to a Marxist theoretical approach. It assumes revolutionary behaviour (at least potentially so) on the part of the working class (witness Hobsbawm's comment that 'at no other period in modern British history have the common people been so persistently, profoundly, and often desperately dissatisfied. At no other period since the seventeenth century can we speak of large masses of them as revolutionary', or Thompson's claim that a revolution was possible in 1832)²³ and suggests that the response to this by the bourgeois state was to reform the relief system to placate these forces. The analysis appears to function well as a Marxist analysis because it contains key categories and sits well with a particular Marxist account of the state. Categories such as 'class', 'poverty', 'struggle', 'revolution' and so forth all make their appearance, and the state operates in favour of the bourgeoisie against the working class. The problem is that it is not at all apparent that such an analysis can be sustained; the social discontent may have had some impact on the production of the New Poor Law, but that impact seems to have been limited.

For the Report itself contains few references to the discontent of the previous years.²⁴ This is not due to the desire to conceal such a concern for, as Himmelfarb notes, such an argument from expediency was entirely respectable and, as we have seen, widely used in the debate over the Reform Act two years earlier.²⁵ Moreover what references the Report does contain to the disturbances prior to 1834 suggest a very different perception of them. For example in relation to 'the events of 1830 in the disturbed districts' the Report states that 'partly under the application of force but much more under that of bribes, that paroxysm subsided'.²⁶ In other words the Report's conception was that the working class could be curtailed by direct force or by higher payments ('bribes'). There is no suggestion in the Report that reform of the relief system would stop working class disturbances.

In fact, if one is considering discontent, particularly over the relief system, then it is bourgeois discontent that was far more widespread, systematic, formal and influential than working class disturbance. The reasons for this lie in the political

economy of a society undergoing rapid and dramatic change, one of the effects of which was to increase the numbers receiving poor relief thereby adding to the poor rates. Between 1760 and 1784 taxes for relief rose by 60%, doubling by 1801 and rising by 60% in the next decade. By 1818 the poor rate was over six times as high as it had been in 1760. In the crisis years 1817-19 expenditure on poor relief was nearly £8 million per annum, or 12 to 13s per head of the population. Whilst this fell in the early 1820s it began to rise again following the 1826 financial crisis, reaching £7 million again by 1831.²⁷ Thus a large amount of discontent was from the middle classes who found themselves faced with enormous taxes, the effect of which was a drastic curtailing of the rate of profit. The Report quotes a House of Commons Committee of 1817:

Unless some efficacious check were interposed, there was then every reason to think that the amount of the assessment would continue to increase, until...it should have absorbed the profits of the property on which the rate might have been assessed.²⁸

The Report goes on to add that since 1817 the amount of relief has increased, and gives examples from parishes concerning the effect this has.

In Cholesbury therefore, the expense of maintaining the poor has not merely swallowed up the whole value of the land; it requires even the assistance for two years of rates in aid from other parishes to enable the able-bodied after the land has been given up to them to support themselves; and the aged and impotent must even then remain a burthen on the neighbouring parishes.²⁹

The reference here to both able-bodied and 'aged and impotent' is significant, for the practical application of the distinction between poverty and pauperism was to be the solution. The costs of the poor rates to the middle classes led to demands for the introduction of a relief system which did not provide relief for all, especially the able-bodied. Since pauperism should be relieved, but poverty not, there was no need for the high poor rates. Restricting relief to the impotent would reduce poor rates and, through the lowering of wages, improve the rate of profit. And it could do all this by returning to the natural law of labour, prudence and virtue. Thus

We have seen that one of the objects attempted by the present administration of the Poor laws is to repeal *pro tanto* that law of nature by which the effects of each mans improvidence or misconduct are borne by himself and his family. The effect of that attempt has been to repeal *pro tanto* the law by which each man and his family enjoy the benefit of his own prudence and virtue.³⁰

The reasoning behind the development of the New Poor Law can therefore be found not so much in working class struggles but in the conjunction of bourgeois political economy and bourgeois philosophy. In the discourse surrounding the workings of the Poor Law we discover how closely entwined bourgeois political philosophy and political economy are. For this discourse reveals the political significance of labour - its commodification within capitalist production and ontological status within bourgeois political philosophy and morality.³¹

It would seem that the true effect of working class disturbance is thus not, as some Marxist commentators have maintained, that the bourgeoisie responded by reforming the Poor Law, but that for the bourgeoisie, burdened with damaging poor rates of £7 million a year, there were *still* these disturbances.³² The point is that the working class were in no way organised in the early nineteenth century to threaten bourgeois society to the extent that some commentators have claimed. Indeed it did not matter how much the working class was antagonised as long as the right strategies - force or bribery - were used against them. After Parliament extended the franchise to the middle classes in 1832 any agitation by the working class movement against the old system of poor relief was isolated and weak.³³

It is notable that the Report does not come to the conclusion that the system of relief is open to abuse by all classes of persons. It states that widows are 'a class of persons [who] have in many places established a right to public support'. It also suggests that outdoor relief to the impotent (sick and aged) offers little opportunity for abuse. Thus several classes of person are exempted automatically from the charge that they may abuse the system.³⁴ Instead the Report focuses on one class of pauper: the able-bodied male (and his dependents). Thus it claims that 'the great source of abuse is the outdoor relief afforded to the able-bodied on their own account, or on that of their families'.³⁵ Karel Williams points out the importance of recognising this focus on able-bodied males and not able-bodied persons. and

that the Report does not suggest radical reform of relief to other groups such as the sick, old, or young widows.³⁶ He claims that the historiography of the Poor Law has made the mistake of blurring the distinction between able-bodied persons and able-bodied males, a crucial one because the Report does not recommend change in relief for the non-able-bodied. Williams argues that conventional analysis of the 1834 Poor Law is that it created a central authority with the objective of abolishing relief to all classes of able-bodied poor. The conventional analysis then suggests that because outdoor relief was not abolished the central authority failed in its objective.³⁷ But even after the New Poor Law had been in operation for over a decade the focus was still on able-bodied men. Thus the 'Outdoor Relief Prohibitory Order' (1844) and the 'Outdoor Relief Regulation Order' (1852), both issued by the central authority, provided a legally binding set of regulations about what classes could obtain outdoor relief and under what conditions. Neither of the two Orders tried to restrict outdoor relief given to the able-bodied. The 1852 Order restricted relief given to able-bodied male persons; the 1844 Order exempted able-bodied widows with dependent children from the general prohibition on relief.³⁸

What this also draws out is the fact that *the New Poor Law was as much concerned with those outside the workhouse as those within*. It is only after 1870 that outdoor relief was severely curtailed. From 1834 to 1870 most paupers were outdoors.³⁹ In other words, the strategy of 1834 was negatively to repress pauperism by making indoor relief thoroughly unattractive and outdoor relief unobtainable for able-bodied men. In terms of the development of industrial capitalism this strategy was crucial, for it helped construct a modern workforce of wage-labour. The New Poor Law was the first attempt to draw a clear line of demarcation between the poor and paupers, that is the working class and the non-employed. (It will be 50 years before 'unemployment' becomes a category of state administration, as will be shown below). The attempt to limit outdoor relief via the principle of less eligibility was therefore a concerted attempt to fashion a modern workforce in which wage labour became the form of existence for the working class. The New Poor Law consolidated the social status of labour power as a commodity for sale on the market.

Yet it could be argued that in itself this was hardly an original feature of the protracted process which constitutes the bourgeois revolution; the account given by Marx of the 'bloody legislation against the expropriated' from the fifteenth century, the forcing down of wages by Parliament, is testimony enough to the state power used to shape the working class.⁴⁰ Yet the significant feature of the processes being examined here is not just this fashioning, but the nature of the structures used - the unitary state and the creation of politico-administrative structures specific to the task.

The one feature of the Report that the Act adhered to was the creation of a new central authority. It was only on administration that the Act was explicit.⁴¹ This is due partly to Chadwick's insistence that less-eligibility necessarily called for an *ad hoc* central and coercive agency: central and coercive because the parishes would not accept it voluntarily; *ad hoc* because the agency could not be parliament itself.⁴² It is this centralising tendency that is the key to state development. There had been shifts towards centralisation in various areas of concern prior to 1834. Concern over factory conditions, in particular for children, led to an 1833 Royal Commission on which a number of Benthamites - Chadwick, Southwood Smith and the secretary James Wilson - sat. The main changes the Commission suggested concerned the length of the working day and certain regulations concerning child labour, but one recommendation was the establishment of a central agency to regulate and administer the factory conditions. As Roberts notes, 'the significance of the act lay not in the shift of administrative power from local authorities to a central department but in the insistence that the central government can regulate private enterprise for the public's welfare'.⁴³ Roberts claims that this marks the beginning of the centrally directed collectivism in the nineteenth century. In fact the 1832 Anatomy Act (also heavily influenced by Benthamites, and Bentham himself) initiated the first centrally financed and administered national Inspectorate, pre-dating the Factory Inspectorate - usually seen as the first - by a year.⁴⁴ One can trace the centralising tendencies in other areas too. The growth in state regulation of Friendly Societies, and through them working class self-help and savings schemes, took a different turn from 1829. Prior to this there had simply been regulation by local officials, in particular concerning interest rates, but an Act

in 1829 shifted the regulation to central government and required regular returns of data; a further Act of 1846 reinforced the centralising tendency through actuarial supervision.⁴⁵

The point, however, is not to identify which institution was the first, but to specify the historical tendency, a tendency which, in provoking such policies and institutions, also lead to the belief, in J. L. Symons words, that 'we must have a central power as the *primum mobile* of all such policies...there must be a central fund...The state alone can, may and ought to do it'.⁴⁶ The New Poor Law is part of this tendency, but it is significant because more than any of the other pieces of legislation or institutions it helped consolidate labour power as a commodity; because more than any other it was concerned with the administration of pauperism, and thus indirectly poverty.⁴⁷ As Kay and Mott note,

More than any other measure the New Poor Law consolidated the unitary structure of the political state in Britain, and it is no accident that this development occurred with respect to labour, for in the last analysis it is against labour that this unitary structure is ranged.⁴⁸

In other words, the emergence of modern administration in the building of the capitalist state occurred at a most vital point: the constitution and regulation of wage-labour.

The issue is not a question of state 'intervention'. The objective behind the New Poor Law was to remove from the state the paternalistic obligation for ensuring subsistence and to create the conditions whereby the political economy of the market reigned. This is not 'intervention' (or 'interference') in the market, but the *constitution* of the market, and a range of regulative institutions designed to facilitate its functioning. The so-called 'nineteenth century revolution in government' is in fact the creation of a series of political structures and administrative mechanisms through which the central state could make its decisions locally effective.⁴⁹ Thus at the same time as insisting that subsistence could be provided by labour, a whole range of structures were created in a series of fields - welfare, health and sanitation, prisons, asylums, factory inspection, police - to effect centrally determined decisions. Roberts gives a list of central agencies created between 1833 and 1854 which cover areas as diverse as poor relief, lunacy,

mines, burials, education, joint-stock companies, sewers and so forth.⁵⁰

This effected a recasting of the relationship between state and civil society. One of the ways this occurs is through the establishment of administrative bodies autonomous of Parliamentary power. The Poor Law Commission was completely separate from the legislature, and Chadwick rejected both judicial review - on the grounds that the courts could simply impede administration - and ministerial control - on the grounds that ministerial responsibility to Parliament could lead to political pressures. The issue here is not the 'accountability' of the structures. It is that the structure created was unique in seemingly possessing a combination of legislative, judicial and executive power. Not only did the Commission have the right to inspect, advise, report and order prosecutions, it also had the power to issue regulations with the force of law. Defiance by the guardians could see them faced with a writ of mandamus from the courts. Even Parliament's attempt to create a check on these potentially overwhelming powers by insisting that all general rules be sanctioned by the Home Office and then sent to Parliament, was overcome by the Commission issuing regulations individually as special rules.⁵¹ Similarly, after 1851 the Commission could decide all disputes between parishes concerning the cost of union relief. Whilst this meant that parishes could avoid the legal battles that had previously been costly, it also meant that the Commission was acting as a judicial board. This had the effect of blurring the line between law and administration such that administrative decisions appeared to have the force of judicial decisions.⁵² The new structure therefore appeared to be not merely an administrative body, but to have quasi-legislative and quasi-judicial powers.

Again, the issue is not about the relative success or failure, or even the effectiveness, of the central board. Historians such as Digby who claim that 'centralisation in the relief administration after 1834 was a convenient fiction to which public lip-service was paid by the inspectors', whilst containing some truth,⁵³ miss the point, which is that the new politico-administrative structures were to provide the institutional form of state administration through the nineteenth and early twentieth centuries. As Finer notes, the administrative developments

have proved the source of nearly all the important developments in English local government, viz. central supervision, central inspection, central audit,

a professional local government service controlled by local elective bodies, and the adjustment of areas to administrative exigencies.⁵⁴

The modern administrative state can thus be traced to the evolution of new political structures that emerged from the shift in poor relief. The administration of pauperism and poverty by the state was a necessary response to the development of private property and industrial capitalism. By constituting labour power as a commodity and creating the institutions to regulate it the New Poor Law performed the task of establishing administration as the form through which mediation between capital and labour could take place, and the form into which struggle could be recast.

It is the absence of any recognition of this central role of state vis a vis the class structure that weakens the Foucauldian reading of the New Poor Law and its institutions. The workhouse can be read as a disciplinary institution: Foucault's description of the model of the disciplinary mechanisms as an enclosed segmented space, observed at every point, in which individuals are inserted in a fixed place, supervision is total, events are recorded, work is imposed and power exercised hierarchically, appears an apt description of the workhouse.⁵⁵ Peter Squires, for example, writes that the 1834 Act was in essence 'a uniquely disciplinary project', part of a 'disciplinary continuum' and 'the emergence of new forms and relations of power' which saw 'an intensification of disciplinary relations across society'; part of what Foucault calls the 'great Confinement'.⁵⁶ A number of factors do lend themselves to such a reading of the New Poor Law - comments by key figures at the time suggest the perception of the workhouse as a disciplinary institution,⁵⁷ the link through Bentham, his concern with prisons and classifiable knowledge and his influence on the leading figures behind the New Poor Law⁵⁸ - but the 'Foucault effect' results in an absence of the state from these accounts and the obliteration of any concept of agency; the result is a seriously weakened account of the kind of changes that occurred. Martin Hewitt, for example, suggests that one of the ways in which Foucault's work can be used to understand welfare and social policy is because it avoids traditional categories such as 'class' and 'state'.

The overarching assumption of state governance...is diffused into a complex

and immanent network of disciplinary technologies, supported by discourses concerning the management of numerous aspects of the body and forming an updated and diversified version of the Panopticon.⁵⁹

But by positing the state as simply one modality of governing and policing among others, the state is reduced ('diffused') into a series of disciplinary technologies where it becomes meaningless to actually talk of the state; this then fails to recognise the continued existence of a sovereign body and its key role in the fashioning of a modern labour force of wage labour through the operation of the New Poor Law; in turn it fails to recognise the process of state-building which this initiated, that continued into the twentieth century.

Citizenship and Social Class, the Franchise and the State

We will return to the administration of poverty below. A discussion of citizenship is necessary here because one of the distinguishing features of the administration of poverty after the 1870s is that it occurs in the context of an expansion of citizenship, an expansion that includes the working class (a process completed by 1918). The extension of citizenship to include all individuals, regardless of wealth, is one of the most obvious ways in which the working class is now in and of civil society; the 'equality' of citizenship facilitates the appearance of a classless 'community'.

One can trace the contours of citizenship through the obvious legal and political dimensions, such as the vote, but this would be a one-sided undertaking; the contention here is that citizenship also needs to be thought of through the range of administrative mechanisms and procedures which mark the citizen as an object of administration. The citizen is both a political and legal subject, and an object of administration, but this latter aspect is often obscured in the concentration on legal and political rights. Here we consider the significance of the right to vote as part of the constitution of the individual citizen as a subject of rights, before developing a critique of one of the most important and insightful accounts of citizenship - that of T.H. Marshall - a critique based on the absence of administration in Marshall's account. For state administration of individuals to occur the working class needs to be (re)thought of not as a class but as a collection of atomised individuals. At

the same time, to be objects of administration they have to be recognised as subjects of right. In Britain political administration develops alongside the expansion of citizenship and the extension of the franchise.

The standard account of the franchise and the spread of citizenship presents 1867 as the continuation of 1832. Its very title, the Second Reform Act, suggests that it was geared as a continuation of the process begun in the previous one. Just as 1832 is said to have granted the right to vote to the middle class, so 1867 is said to have granted the vote to the working class, a process continued in 1884 and completed in 1918. To claim that 1867 'transformed England into a democracy'⁶⁰ is far-fetched. Whilst it is true that the vote was conceded to the working class, this concession was only to some male sections of it. This is a crucial dimension to the extension of the franchise between the years 1867 and 1918. The key point here is that it constituted the politico-legal aspect of the process whereby the working class was incorporated into both civil society and the state; it formed the complementary process to the politico-administrative process that forms our central concern.

The tactical battles over the Act are a prime example of a ruling class learning how to change in order to preserve and thus survive. When the Liberal government of 1866 presented to the Commons the statistics they had been producing, the size and distribution of the working class became an important factor if there was to be an extension downwards of the property thresholds produced in 1832. For example they estimated that if the property threshold in the towns was to be reduced to £6 then the new artisan vote would amount to nearly 250,000; by comparison if it was reduced to £7 then the figure would be 150,000. Likewise the Conservatives in 1867, in their case for household suffrage, recognised the strategic importance of the residential qualification, a property threshold of £15 for county constituencies and 'fancy franchises' of plural voting.⁶¹

The outcome was the appearance of major political change, but in which it is estimated that at best only 30% of the adult male urban working class was enfranchised.⁶² Given these details we can agree with Moorhouse that 1867 was far more a result of tactical manoeuvres between competing elements within the ruling class rather than any moral sentiment. Not so much a 'leap in the dark'⁶³

as a controlled experiment to observe the behaviour of a sample of the working class.⁶⁴ Once the experiment proved 'successful' in that the extension of the franchise did not prove to be the end of bourgeois civilisation, further experiments became possible.

The further extension in 1884 proved the success of the 'slow change to preserve' approach. A further 1,762,000 voters were allowed, but this still left approximately 40% of adult males without the vote. Indeed by 1910 of the 12 million adult males only 7- million had the vote. (Not forgetting that of these many had the plural vote - all of whom would by definition be of the middle class).⁶⁵ It is partly for these reasons that the Act of 1918 must be considered the more important of the Acts. Until 1918 the vote was still a privilege rather than a right. The Act of 1918 conceded the principle that each adult male should have (at least) one vote, as of right by virtue of being a citizen; at the same time it began the process whereby women entered into the sphere of political life. The very title distinguishes it from 1884, 1867 and 1832 in more than just name. The notion of a 'Reform' Act (whether 'great' or not) relies heavily upon the assumption that the Act is a continuation, with alterations, of what has gone before. The Act of 1918, with its announcement of the 'Representation of the People' registers the enormity of the change. 1918 was not to signal yet another reform; rather it was to signal the recognition of the existence of a 'people' that had a right to be represented. It was this Act that signalled the finalisation of the incorporation of the working class as a collection of individual political subjects into political life, with a right to a say in who governed them. War as much as the development of a newer liberalism was the cause. The introduction of conscription in the Military Service Act of 1916 along with the increased employment of women meant that the extension of the franchise in 1918 was only to be expected.⁶⁶

One of the reasons for thinking of 'the people' as a homogenous group to be represented is that it enables the concept of society to be evacuated of any notion of class, and instead thought through the idea of 'nation' or 'community'. Whilst classes may have been considered as constituting 'two nations', this was only a temporary period in the transition to 'one nation', a people or 'community' with common cause. The idea of the nation or community further operates to contain

working class action, conceived as selfishness by a particular group against the whole. Moreover, in being evacuated of class the idea of community jettisons any idea of agency: the community becomes a passive object, a collection of numbers unable to articulate any collective demands. The extension of the franchise, then, constitutes the attempt to declassify (in the sense of de-class-ifying) the system, in order to reconstruct the working class as part of an 'electorate', a collection of individuals; the decomposition of the working class and its recomposition as a collection of individual citizens, held together as an imagined community. Yet an imagined community is also an administered one: individuals can be reclassified through the process of administration - 'unemployed/employed' being just one example, the census as a whole illustrating the tendency in general. Indeed, whereas in the earlier part of the century 'classification' meant ordering information in taxonomies, by the end of the nineteenth century it had come to mean knowledge placed under the jurisdiction of the state.⁶⁷

Whilst previous reforms of the franchise left it integrally linked with the actual possession of property - one writer was to note in 1866 that 'a man who has earned a competence, who is able to live without depending on the bounty of others, has given a test of his manhood'⁶⁸ - it was only 1918 that changed that, for it is only in 1918 that the vote was not attached to property.⁶⁹ For this reason it is not surprising that 1918 is held to be the crucial date for the transformation of Britain into a modern democratic state.⁷⁰ However, this does not mean that property was no longer relevant to the issue. Whilst it is true that from 1918 wage-labourers (male, over 21) could vote regardless of the actual property in their possession, this does not mean that the issue of property was no longer central. For although actual ownership of property was no longer necessary, what was still necessary was that the individual voter appear as a *potential* owner of property; if nothing else, the voter had the property of his/her labour power. The entrance of the working class into the sphere of right is a function of the constitution of the human being as a legal subject who has the potential to enter into legal contracts. At the heart of the contractual relationship lies property.

The issue of rights is therefore justifiably central to accounts of citizenship. In T.H. Marshall's three 'stages' of citizenship - civil, political and social - it is the

type of rights that are associated with each stage that are important. The first was concerned with the emergence of certain civil rights in the eighteenth century, such as the right to work in different fields; the second sees the development of political rights, such as the right to vote, in the nineteenth and early twentieth centuries; the last traces the emergence of social rights, said to occur with the growth of welfare systems in the late-nineteenth and then the twentieth centuries.⁷¹

One of the positive features of Marshall's account is that he emphasises the struggles that took place over the emergence of citizenship rights, to which class is central; he states categorically that, especially in the twentieth century, 'citizenship and the class system have been at war'.⁷² But, despite Marshall's apparent emphasis on class and struggle, his account is problematic in a number of ways. First, as commentators have pointed out, Marshall's 'struggle' is not so much between classes as between opposing principles. For Marshall it is the *principle* of the market and the *principle* of citizenship that are in opposition. Or, to put it another way, the inequality of market society seems to contradict the equality registered by citizenship (in its 'social' phase).⁷³ Marshall is not concerned with class conflict so much as principles that appear to conflict. As such the conceptualisation of it as 'struggle' seems a little out of place. Indeed in Marshall's account classes are often not in conflict or struggle at all - witness his suggestion that 'the familiar instruments of modern democracy were fashioned by the upper classes and then handed down, step by step, to the lower'.⁷⁴ Even the suggestion that the principles are in contradiction rather than struggle⁷⁵ seems too concerned with sustaining the essence of Marshall's position that there is a fundamental opposition involved. For whilst the formal equality of rights and the inequality of the market system may appear to be in 'contradiction', the latter is in fact premised on the former. The formal equality provided by modern citizenship, through law, is necessary for maintenance of the class system, and is a product of the constitutive power of the state. To fashion a modern labour force and impose the understanding that labour power has to be sold as a commodity the state had to constitute human beings as legal subjects, such that they could be identified as a population, a collection of equivalent individuals. The formal equality of legal and political rights was therefore a condition for the consolidation of capitalism in

modern Britain. This much Marshall notes himself: 'these [early] rights did not conflict with the inequalities of capitalist society; they were, on the contrary, necessary to the maintenance of that particular form of inequality'.⁷⁶ For Marshall it is *social* rights that conflict with capitalism, for they appear to grant rights against the economic inequalities. In other words, the welfare system contradicts the idea of the market, for it appears to create 'a universal right to real income which is not proportionate to the market value of the claimant'. In other words, social rights 'assume the guise of action modifying the whole pattern of inequality'.⁷⁷ We shall return to the problems with this below.

A second reason why Marshall's account is problematic is that he is forced to fit everything into the framework of civil, political and social *rights*. This creates problems when collective legal subjects such as trade unions are considered, for these are regarded as creating a secondary system of 'industrial citizenship', part of *civil rights* in general. Civil rights are said to have developed in the eighteenth century, but even the long eighteenth century - from the Revolution to 1832⁷⁸ - fails to stretch far enough to incorporate the development of trade union 'rights' which only arrive in the period 1871-1906. More substantively, Giddens argues that the civil rights of individual freedom and equality before the law were fought for and won by the bourgeois class, enabling the development of formally free wage labour. This was also why civil rights are administered through the law in the courts. By comparison trade union 'rights' were the product of sustained working class struggle. Whilst the claim that individual freedom and equality before the law were only fought for by the bourgeois class is a dubious one, Giddens is right to criticise Marshall for misleadingly linking industrial rights with civil rights.⁷⁹ However, Giddens overlooks the reason why Marshall discusses trade unions in this way, namely because he is treating them as legal subjects which, when engaging in collective bargaining, form contracts. The reason he considers them in this way is because he has accepted the argument, common in the nineteenth century, that the essence of the transition from 'pre-modern' to 'modern' society is the transition from status to contract.⁸⁰

The third reason Marshall's account is flawed is that it is an account from which the state and, relatedly, modern administration, are conspicuous by their absence.

The conflict between principles certainly needs no state to work itself through, and even in his discussion of class struggle and the development of citizenship Marshall makes no sustained analysis of the state. By 1918 the individual legal subject, bearer of civil, political and social rights has been almost fully consolidated, but there is very little mention of the central agency of this constitution. Likewise even where discussing the constitution of trades unions as collective working class organisations Marshall does not, contrary to Giddens' suggestions otherwise, overplay the role of the state.⁸¹ Rather, the significance of the state in this process is barely brought out by Marshall - he presents the development of trade unionism as merely an extension of civil rights, without addressing the administrative mechanisms and the consequent developments in administrative and public law that this involved. As will be shown below, this process is fundamental to the development of both trade unions and the state. Thus Marshall's recognition of the historical dimension to the development of citizenship, and even his recognition of class struggle, are offset by his decision to ignore the central agency in the constitution of the modern citizen, the state.

Marshall's account of citizenship is ultimately hampered because by focusing on rights his concern remains with the *legal*; he therefore fails to develop any account of *political administration*, especially one used in conjunction with the state-civil society distinction.

Casework, Unemployment, Insurance: English Working Citizens and Their Families

As a form of mediation by the state between capital and labour, the means by which working class struggle became subsumed under a political form, political administration was only consolidated in Britain after the 1870s. For in this period it could be used to consolidate the incorporation of individual (working class) citizens into civil society and the state. From the 1870s concern with the workings of the Poor Law grew, and attempts to 'improve' it involved various changes to its administration, both inside and outside the workhouse, culminating, in this period, in the 1911 National Insurance Act, which was to lay the foundations for twentieth century state administration of welfare and through this the administration

of the working class. Simultaneously the workhouse underwent a change in the way it was perceived, as did the sections of the population for whom it is considered appropriate.

The 1870s were characterised initially by an attack on outdoor relief. What has been called a 'crusade' against out-relief⁸² appears to have been a short term success in that the number of outdoor paupers fell by 33%, a decrease which was not compensated by an increase in indoor numbers, which also fell by 11%.⁸³ As its focus was on any form of relief that threatened industriousness the crusade against out-relief was an attempt at dispauperisation. For the most part this manifested itself once again in a concern for the able-bodied pauper. Thus the Local Government Board, responsible for the Poor Law from 1871, found that some individuals regarded conditions within the workhouse more 'eligible' than those outside. The Board assumed this was due to the 'softness' of the conditions inside the workhouse. To remedy this an 'able-bodied test workhouse' at Poplar was established. It was supposed to be a greater deterrent due to its discipline and diet, which all able-bodied paupers in London had to undergo.⁸⁴ The concern that the provision of relief would somehow lead to demoralisation extended to other areas too. The London School Board was criticised by the Charity Organisation Society (The Society for Organising Charitable Relief and Repressing Mendicity, hereafter the C.O.S.) for providing boots in order that the poorest children could attend school. The suggestion was that if this was extended then parents would neglect to send their children to school in order to get the boots.⁸⁵ Likewise the C.O.S. regarded school meals as a form of relief to the parents, which in turn would encourage them to evade their responsibilities.⁸⁶

Formed in 1869, the C.O.S. did not intend to give charity, but to organise the giving of charity through the co-ordination of the numerous charitable societies and their relations with Poor Law authorities. Membership of the C.O.S. represented a virtual cross-section of the more established professions.⁸⁷ This was because the society itself was the product of the fears of the middle and upper classes in the 1860s that pauperism was on the increase and the gap between the classes was increasing. In this sense the C.O.S. was a response to the problem of two nations.⁸⁸

The most notable innovation that the C.O.S. introduced was the case paper, an attempt at systematically investigating every individual applicant for relief. Whilst this was intended to enable the discrimination between deserving and undeserving poor⁸⁹ it also laid the foundations for one of the central principles of modern administration - the individual subject (or family member) as an object of administration. The C.O.S. assumed that the only way to establish whether an applicant was indeed a deserving case was to have a complete knowledge of his/her background. This would deter both 'clever' paupers who sought to attain as much relief as possible, and those who could not provide proof of their status or who wished to avoid the humbling experience of having to do so.⁹⁰ To this end the C.O.S. developed the professional enquiry into the status, culture, behaviour and lifestyle of each individual applicant and their families. Personal contact was made and individuals could be visited at home, information gathered and a file created with details of the individual's circumstances. Whilst the initial purpose of this task was to decide who was an appropriate candidate for relief, the outcome was the development of knowledge of the individual. In turn this allowed the growth of forms of classification of, if not the population or the working-class, at least those who came forward for relief. By 1886 C.O.S. caseworkers in London were handling 25,000 cases a year.

In the development of the case paper it could appear that the activities of the C.O.S. constitute part of the 'modern' power/knowledge network, the emergence of the surveillance, administration and policing of categories of people within the social body, and the performance of such tasks by 'unpolitical' professionals. Foucault writes that the 'case constitutes an object for a branch of knowledge and a hold for a branch of power'.⁹¹ For Donzelot such a 'social inquiry' is designed to produce investigatory, classificatory and interpretive knowledge which can then be used to provide the basis for the administration of what are regarded as the needs of the object of administration. In this way the social inquiry is situated at the meeting point of assistance and repression. In relation to the granting of charity the purpose of examinations that produce such casework was to make the granting of assistance conditional on the satisfactory outcome of the investigation of needs.⁹² Continuing this Foucauldian reading, Procacci suggests that as the

forerunner of the social worker the visitor of the poor is the 'instrument of the capillary distribution of household relief', whilst Squires claims that the development of casework indicates an adaptation of 'older interrogatory disciplines to new settings' in which caseworkers were to extract a 'confession' from the poor. In this way casework becomes an ongoing social relation in which there is continual supervision, observation and treatment aiming at 'character transformation'. Casework is thus read as helping to construct a new normative discourse concerning supervisory practices and surveillance.⁹³ Moreover, the central concern of the C.O.S. was family obligations, and the man as wage-earner, enabling it to be read as part of Donzelot's 'tutelary complex', social management through families.

However, there are problems with such an analysis, concerning both the origins and the outcomes of the C.O.S. and its casework. We shall examine these before turning to the question of the family.

In terms of its origins, there is no doubt that the C.O.S. contained an individualistic approach to morality and poverty. Yet it also contained a distinctly 'statist' approach, rooted in the background of its prime movers in British Idealism. It is notable that in concentrating on its individualism, and the consequent normalising tendencies, much of the literature on the C.O.S. fails to do justice to this aspect of its workings.⁹⁴ It is true that for those behind the C.O.S., such as Bernard Bosanquet and, most notably, the organisations founder and Secretary C.S. Loch, charity was considered a product of individual demoralisation, the very thing that (individualised) casework would seek to remedy. Yet the C.O.S. also worked on the principle that charity was a central feature of civilised life, overcoming the problems generated by individualism by linking the individual through a series of communal structures and, ultimately, to the state. By ignoring this latter aspect the C.O.S. can be read as just another organisation of individualistic slant. This fails to register the differences between the 'individualism' found within the writings of Bosanquet and Loch and that found in other liberal thinkers. Bosanquet, for example, distinguishes between the atomic and ethical (higher) individualism. The former, found in Bentham, Mill and Spencer, is a one-sided understanding; the latter goes beyond mere physical

separateness to the ethical individual as the foundation of social life, via the linking of the individual to the general will. The individual's real will would correspond to the will of the state. As such state action was justified when it corresponded to the development of individual consciousness.⁹⁵ In other words, the simple dichotomy 'individualist' vs. 'statist' tends to force the C.O.S. into the former category, then further reduces it to the kind of individualism found in much late-nineteenth century thought; this then allows a reading of its activities as part of the normalising tendencies of disciplinary welfare. All of which fails to do justice to the centrality of the state in its thought and practice.

In terms of its outcomes, whilst the initial impetus behind casework may have been from the C.O.S., a non-state body, this was only true for as long as no dramatic changes were needed to the running of the Poor Law and the administration of poverty. As soon as the system itself came under threat and changes were needed, casework developed into a form of state administration. Thus the early 1900s witnessed a shift in the administration of outdoor relief which was to be based on knowledge of paupers. The 1910 circular concerning 'The Administration of Out-Relief' required that

guardians should endeavour to acquire a complete knowledge of the circumstances and needs of the applicants and should inform themselves, by every means in their power, of the resources of the applicant.⁹⁶

In the early 1900s, then, the strategy was to develop a knowledge of paupers in order for good administration to be achieved. This strategy was heightened by the 1911 'Relief Regulation Order' establishing a new legally binding framework obliging guardians to acquire a level of knowledge of paupers necessary for the operation of outdoor relief. The 1911 Order obliged Poor Law authorities to develop case papers of all claimants. This was to contain information concerning the claimant but, most significantly, was to contain successive entries so that an historical knowledge of the individual could be developed.⁹⁷ Through these developments a systematic knowledge of the individual claimants could be developed; the pauper thus becomes a 'case' for treatment. But this knowledge upon which the administration is based occurs within the state. It is a state

knowledge which both facilitates and yet is premised upon state administration. This will become even more apparent with the development of National Insurance, considered below.

The reasons for this are that by the mid-1880s the crisis-ridden character of capitalism was again being revealed, most notably in the occurrence of direct working class action. Given that it had been intended to solve such crises, at least indirectly, the New Poor Law again became the focus of attention. For this the C.O.S. simply did not have the means of response, and it took major developments of the British state to respond in order to avoid the feared revolution.

The idea that the C.O.S. also represents part of the shift to a tutelary complex is also highly questionable. It is true that concern with 'the family' grew in this period, but the meaning of this needs to be made clear. The New Poor Law had no respect for families as such, breaking them apart when the male wage-earner failed to support the family, and separating men, women and children in the workhouse. The fact that this was possibly the most disliked aspect of the New Poor Law should not be taken as a working class desire for 'the family'. The later concern with 'the family' - keeping it together, maintaining 'order' within it, regulating it according to the standards laid down by external agencies - was part of the wider search for an alternative to the workhouse as a means of (re)fashioning the labour force. The family was constituted as part of the project of reinvigorating the flagging capitalist economy. The 'individualism' that appears to have become so central to bourgeois thought in the nineteenth century is, as Barrett and McIntosh point out, a form of 'familism'; 'self-sufficiency' in practice turns into the idea of self-supporting families, the family as the unit to be maintained and rendered 'self-supporting'.⁹⁸ Given its central role in the political and moral economy of bourgeois thought, the family became one of the pivotal points around which administration could operate. For this to happen 'family' had to be shorn of its earlier meanings, namely as indicating a household, including 'non-kin inmates, sojourners, boarders or lodgers...indentured apprentices and resident servants, employed either for domestic work about the house or as an additional resident labour force for the fields or the shop',⁹⁹ and rethought as an isolated economic unit. In this sense, if one is to talk of individualism as familism, then one could say

that the family became atomised. In effect 'the family' means 'the bourgeois family',¹⁰⁰ *the working class family being constituted as such as part of the development of class and state power*. Donzelot is right to suggest that we think of government *through* rather than *of* the family, but this makes sense only if one does so in conjunction with the idea of class and state as agencies of this government through the family. The state, in Poulantzas' words, 'traces and assigns the site of the family'.¹⁰¹ The family becomes a unit of political administration, constituted as such by the state as part of its development of mechanisms for the policing of welfare and struggle. Now, this undoubtedly smacks of the Marxist functionalism Donzelot disdains, prompting him to ask why the working class itself chooses to invest in family life.¹⁰² The answer is that the link between individualism and 'familism' is also the link between 'privacy' and the family. As a pivotal point around which administration operates, the family was also constituted as the realm of privacy. Eli Zaretsky writes that

proletarianization gave rise to subjectivity. The family became the major sphere of society in which the individual could be foremost - it was the only space that proletarians "owned". Within it, a new sphere of social activity began to take shape: personal life... The proletariat itself came to share the bourgeois ideal of the family as a "utopian retreat".¹⁰³

It is not so much that the working class 'chose' 'the family', as that it was given the atomised family by the state as one of the grounds of struggle.

Whilst it has been argued that an account of the emergence of the New Poor Law in 1834 resting on working class agitation cannot be sustained, such an account *is* possible for developments from the 1880s onwards, for it is in this period that bourgeois fears of a revolution were justified. The outcome was a concern over the working class condition and the failings of the Poor Law. The depression that ran through the 1870s and 1880s signalled that the growth of industrial capitalism had brought with it a growth in poverty too. It became clear that both 'progress' and poverty were possible at the same time. The dramatic increase in unemployment in 1885-86 intensified the process of class struggle, culminating in the riot in Trafalgar Square on February 8 1886. The violence of the riot was significant not only because London had not experienced anything like it

and that it took place in the heart of property and government, but also because it signified a perception of property and government that was new, one considered as indicating a complete lack of respect for the forces of law and order.¹⁰⁴ Stedman Jones is right to note that the significance of the riot lies not in the actual events themselves, but in the response to it,¹⁰⁵ which was that Joseph Chamberlain, President of the Local Government Board, the next day issued a circular encouraging local authorities to undertake public works as a means of relieving unemployment. The circular specified that the work provided should not carry the stigma of pauperism; that the unskilled should be able to perform it; that it should not compete with existing employment; and that the pay should be slightly less than that given for comparable private employment. Reissued in 1887, 1891, 1892, 1893, and 1895 (though in 1895 the last point was dropped),¹⁰⁶ the circular was the first recognition that there were categories of people for whom the existing Poor Law was not appropriate: workers. It signalled an acceptance that unemployment was a social rather than an individual problem, and meant that for the first time the state took responsibility for welfare outside of the Poor Law.¹⁰⁷

The Chamberlain circular was the first recognition that the central element of social policy - the Poor Law - was in fact woefully inadequate for the central social concern - unemployment. It became clear that unemployment was not a product of individual demoralisation but a feature of much of the work in industrial capitalism, which took the form of casual work interspersed with periods of unemployment. The by now apparent cycles of capitalist growth also pointed to the existence of periods in which unemployment was unavoidable for many. In this sense the fundamental social problem came to be not pauperism, nor a whole range of other policy issues such as housing, sanitation, health and so on, but unemployment. Moreover behind the issue of unemployment lay the greater issue of poverty, for it was precisely because of the absolute poverty of the working class that unemployment was an issue.

The comment by the economist Alfred Marshall that 'the problem of 1834 was the problem of pauperism, the problem of 1893 is the problem of poverty'¹⁰⁸ is instructive here. For, given that poverty is necessary for capitalism, the problem of poverty becomes the problem of capitalism, or, to put it another way, the status of

the working class. The shift in the late nineteenth century to a concern with poverty rather than pauperism therefore signals a shift towards the administrative recognition of the working class. It is significant that this is done through unemployment. It is unsurprising that the period which sees the emergence of 'unemployment' as an object of discourse, the 1880s, is the period in which it becomes a category of state administration. The first global reference to employed manual workers appeared in official documents in 1887; prior to this all the trades of the workers were simply listed. Unemployment as an administrative category emerged through the work of political economists such as Marshall to finally take on widespread use and acceptance by 1895.¹⁰⁹ The point is that with the emergence of unemployment as a category of state administration the whole population can be regarded as existing on a plane of equivalence. On this plane each individual can be treated equally, as opposed to one of a series of groups, and thus becomes an individual object of administration.¹¹⁰

The response by the British state to the problem of unemployment was, firstly, the development of labour exchanges, and, secondly, the development of national insurance, culminating in the 1909 Labour Exchanges Act and the 1911 National Insurance Act respectively. The first of these shall be dealt with briefly.

The 1909 Act was partly the product of the 1909 Royal Commission on the Poor Law, and partly the product of Beveridge's criticisms of the 1905 Unemployed Workmen Act. Both the majority and minority reports of the commission favoured the introduction of labour exchanges. Likewise Beveridge argued that the 1905 Act, designed to offer relief works for the unemployed along the lines recommended by Chamberlain, failed to tackle the problems of the labour market. What was needed, argued Beveridge, was not the provision of work, even relief work, but the rational organisation of the labour market by the state in order to ensure the mobility of labour. Thus the Act dealt with the issue of unemployment through the introduction of labour exchanges at which the unemployed could register in order to offer themselves for work outside of the locality. In this sense the 1909 Act did not create a single job, was not intended to do so, but sought to fashion a mobile labour force.¹¹¹

But the Act was also intended to be part of the wider package which included

the introduction of national insurance, a point reiterated by Winston Churchill in his introduction of the Bill into the Commons. Far from universal - universal insurance would only come after the Second World War - the insurance scheme in 1911 was intended to cover only temporary and predictable unemployment. This meant it would apply only to trades in which there existed cyclical unemployment. It therefore excluded trades which contained large amounts of casual labour, trades which were in decline, trades in which large numbers of women worked and trades which had a tendency to put workers on short time rather than lay them off. The other major feature of the scheme was that it would have to be contributory, requiring contributions from worker, employer and the state.

The actual level of these contributions need not concern us here.¹¹² Nor need the fact that the insurance was not universal be an issue. What is of significance is the nature of the scheme in terms of the relationship it established between worker, employer and state. For what social insurance does is consolidate a specific relationship between worker, employer and state. By contributions being made by both employee and employer their relationship is locked; and it is locked through the mediation provided by the state. Thus the contribution from the state as the third force conjoins with the other two to produce a locked triad. Considered in more general terms the tripartite relationship can be recognised as a relationship between labour and capital mediated by the state. The state acts as a wedge between capital and labour, simultaneously pulling them together and holding them apart. It does this through political administrative forms such as social insurance. This brings the individual into a concrete relationship with the state, consolidating the individual as an object of administration through the formal recognition of needs. Even future needs are formally recognised by the state. In this way the establishment of labour exchanges can be read as at least a partial guarantee that the labour market would be regulated to the utmost degree in order that unemployment, and therefore state benefit payments, be kept to a minimum.

Furthermore this development of political administration was due not only to the recognition of individual needs but to the recognition of the working class acting as a class 'for itself'. The concern over the threat of insurrection, noted above, needs further comment. It seems quite clear that leading politicians at the time

came to recognise that something had to be done to avert the threat of poverty. To this end they recognised the importance of social insurance. Churchill was to claim that insurance would

increase the stability of our institutions by giving the mass of industrial workers a direct interest in maintaining them. With a 'stake in the country' in the form of insurance against evil these days workers will pay no attention to the vague promises of revolutionary socialism...It will make him a better citizen, a more efficient worker, and a happier man.¹¹³

And Balfour was to argue that 'Social legislation...is not merely to be distinguished from Socialist legislation but it is its most direct opposite and its most effective antidote'.¹¹⁴ Moreover, leading political figures recognised that the example of Bismarckian legislation in Germany afforded a useful example of how the socialist movement could be cut off by the introduction of social insurance policies. Churchill was adamant that major advances for both state and party could be made if they were to 'thrust a big slice of Bismarckianism over the whole underside of our industrial system'.¹¹⁵ The state even sponsored trips to Germany for trade unionists to examine the workings of Bismark's policies.¹¹⁶ Finally major political economists such as Marshall were coming to recommend the adoption of some sort of schemes as used in Germany.¹¹⁷

The development of new political forms within the state can therefore be seen quite clearly as a response to the collective power of social labour and the crisis ridden character of capitalism. Recognising the power of the working class, the state assumes a position as the wedge between needs and capacities, but does so through a series of administrative forms. The development of national insurance, as one element of the response to the threat of the working class, signalled the formal recognition of need by the state, a process which consolidates the separation of the needs and capacities of the working class and yet at the same time locks it in a relationship with capital and the state. In return the working class is granted increased political rights: individual rights of citizenship, such as the right to vote, and collective rights through the legal immunities granted to trade unions (discussed below).

Some commentators have suggested that just as in Germany, the introduction of

social legislation in England was a response to the increased political ‘power’ or ‘pressure’ of the working class. However, it is important to specify precisely what is meant by this term. It is argued here that the power of the working class was recognised at the time as the threat of socialism; the power was the power to use force in order to effect revolutionary change in the social order. On the other hand, certain commentators have considered the power of the working class in this period solely in terms of electoral power. Whilst these are not exclusive, assuming only the latter has allowed commentators to regard the introduction of social legislation as a necessary corollary of the extension of the franchise to some sections of the working class. Marshall’s three phases of citizenship rights rests heavily on what he considers to be ‘popular demand’. Likewise Sydney Webb assumes that ‘collectivism is the economic obverse of democracy’, that is, given the vote the working class will want to use it not only to vote for politicians, but also to obtain some sort of economic democracy.¹¹⁸ Webb assumes that the working class will use, and did use, its power to *demand* the kind of reforms introduced in the 1906-11 period. In other words, social legislation was a response not so much to the revolutionary threat of socialism, but to working class demands for social legislation. In similar fashion some Marxists have argued that social unrest constituted a ‘popular demand’ for such legislation.¹¹⁹ There are a number of problems with such claims. Navarro, for example, points to the strike activity during and after 1890-93 as the prime example of such unrest, but fails to show any direct link between this and the legislation of some 15 years later. Similarly, if social reform was so popular then it should have been a major election issue, increasing in importance with the gradual extension of the franchise. Yet, as J.R. Hay has shown, this was not the case.¹²⁰ The 1886 election was fought mainly on the Irish question, and in the elections of 1892, 1895 and 1900 social reform was in no way a significant element on the agenda. Even in the 1906 election the principle issues were Tariff Reform, indentured Chinese labour and the Education Act of 1902. Indeed, because of the opposition by the Lords to the 1909 budget the two elections of 1910, in the midst of the liberal welfare reforms, were also for the most part not concerned with social reform.¹²¹ Moreover the time-lag between the extension of the franchise in 1867 and 1884 and the introduction of reforms in

1906-11 would also need explaining.

In fact, it can be argued that such reforms were introduced *against* the wishes of the working class, and that the working class struggled against its incorporation through such mechanisms. Henry Pelling, for example, questions whether pressure from below, in the form of electoral pressure, was the main force behind the growing welfare legislation. He argues that the 'extension of the power of the state at the beginning of this century...was by no means welcomed by members of the working class, was indeed undertaken over the critical hostility of many of them, perhaps most of them'.¹²² The gradual introduction of state education from 1870 to 1880, for example, was met with either indifference or dislike by the working class, as was registered by the Royal Commission on the Elementary Education Acts 1888. This can only partly be accounted for by the loss of earnings that a working class family may suffer were a child to be placed in school. Pelling suggests it is far more likely due to a perception of the state as an organisation run by and for the benefit of the wealthy. Given working class distrust of the state and the absence of welfare reform as an election issue Pelling argues, first, that the legislation on welfare of the period was for the most part sponsored by middle class reformers, for a mixture of humanitarian reasons and because they believed it would be electorally popular and, second, that there is no evidence that social reform was in fact popular with the electorate until after it had been carried out.¹²³

It is true to say, however, that voting at elections is always determined by a number of factors, not all of which are knowable to the historian, but support for Pelling's argument can be marshalled from elsewhere. The largest organisations which had an exclusively working class membership were the Friendly Societies which, with a total membership of approximately 5.6 million members in 1900, provided insurance against sickness and old age. They can be regarded as a form of working class collective provision and solidarity in the face of poverty and against the Poor Law. The two largest friendly societies, the Manchester Unity of Oddfellows (713,000 members in 1899) and the Ancient Order of Foresters (666,000 members in 1899), were both opposed to increased state intervention, the former because it thought that self-help was morally and socially preferable to

redistributive provision by an overly powerful state, the latter because it regarded politicians' proposals as a means of evading demands for higher wages and regular work.¹²⁴ This did not go unnoticed by the politicians at the time - they recognised that the friendly societies were opposed to pensions and national insurance but that they could also provide the strongest link between the state and the working class. Because of this the politicians sensed the need to negotiate with the societies. However, the friendly societies opposed state sponsored pensions and national insurance up to their introductions in 1908 and 1911 respectively. Despite long negotiations at the end of 1910 the Chancellor was faced with the possibility of having to introduce national insurance without the cooperation of the societies.¹²⁵ Even as late as September 1911 the *Oddfellows Magazine* was arguing that the Act was an attempt to deny the working class the right to self government.

Working men are awakening to the fact that this is a subtle attempt to take from the class to which they belong the administration of the great voluntary organizations which they have built up for themselves, and to hand over the future control to the paid servants of the governing class.¹²⁶

Given this, it could be argued that there was substantial working class opposition to the introduction of the welfare reforms in the period 1906-11. In this sense one might argue that despite struggling for social recognition, the working class resisted its incorporation into the state. As the boundaries between state and society shifted, with the concern for social order and thus the administration of the working class at the core of the shift, the working class was not a passive object of change but an active subject struggling against its incorporation into the state. Nonetheless, the very fact of its struggle helped forge the apparatus of administration that was then used against it.

The Constitution of Collective Legal Subjects: Trade Unions and the State

Marxists have noted the apparent limitations of trade unions and their acceptance of the status quo, as well as the unions role in constricting working class activity. For example Miliband describes them as 'agencies of containment of struggle' and 'allies in the management of class conflict', as do most of the contributions in the

collection of essays Trade Unions Under Capitalism. But the explanatory conceptual apparatus these writers use is often highly problematical. There is a tendency to rely on concepts such as the 'labour aristocracy', the limitations of 'trade union consciousness', the inadequacies of the Labour Party or political organisation generally, even Michels elite theory.¹²⁷ There is a continual sense that the unions have somehow 'failed', sometimes linked with the perceived passivity or supine character of the working class found in the Anderson-Nairn thesis. But what such accounts fail to address is the far deeper ways in which unions are creatures of the state.

The 1824 repeal of the Combination Acts - which had rendered it illegal for workers to collectively organise in order to raise wages or shorten hours and held any such organisation as unlawful with regard to the common law of conspiracy - saw the formation of trade unions, followed, in 1825, by the restriction of their activity to regulation of wages and hours of work. One of the major limitations on trade union activity in this period was precisely the importance of the individual and the contract, especially important given that unions were concerned with trade, the realm of freedom of contractual arrangements. This militated against the development of collective bargaining for, as collective action, it was by definition coercive; even some union leaders, such as Francis Place and Joseph Hume, felt it to be wrong.¹²⁸

Such a conception remained commonplace from 1832 to 1871, despite the plethora of Acts concerning factory legislation, mines and administrative regulation generally. Thus in *Hornby v. Close* (1866-67) it was successfully argued that a trade union was an illegal body 'in restraint of trade, and depriving the workman of the free exercise of his own will'.¹²⁹ The break with such conceptions began in 1871 with the Trade Union Act. The Royal Commission on Labour of 1867 had proposed three principles as the basis for legislation: that no act committed by a workman be illegal unless it would be illegal if committed by another person; that no act committed by a combination of workmen be illegal unless it would be illegal if committed by a single individual; and that trade union funds be given statutory protection. As the Act of 1871 this had the effect of decriminalising acts that were in restraint of trade. Yet at the very same time the Criminal Law Amendment Act

(1871) rendered any act of violence or molestation, or threats uttered, in the course of an industrial dispute an offence. Thus even peaceful picketing was illegal, the Act restating the importance of free contract and individual liberty. The repeal of this Act by the Conspiracy and Protection of Property Act (1875) freed the unions from the threat of prosecution for criminal conspiracy and legalised peaceful picketing. Nonetheless whilst the unions may have been freed from the law of criminal conspiracy, the courts began to use the law of civil conspiracy, especially after the dock strike of 1889 when unskilled and transport workers became increasingly unionised, a clear example of the courts operating in defence of what they conceived of as the holy doctrines of the freedom of contract and the rule of law, and their resistance to administration. In response to Parliament declaring the activities of trade unions no longer criminal the courts developed the tort of conspiracy.¹³⁰ In a series of cases between 1893 and 1905 men involved in strike action were held liable for civil conspiracy, or for inducing others to break their contracts. The most famous case was the Taff Vale decision of 1901, in which a registered union was liable to pay damages from its funds for torts committed by those acting on its behalf. Following this the Trade Disputes Act of 1906 did for the law of civil conspiracy what the Act of 1875 had done for the law of criminal conspiracy.¹³¹

The years 1871 to 1906 then, saw the development of the freedom to strike. So long as the 'golden formula' of acting in 'furtherance of a trade dispute' was followed, the unions had legal immunity. Through the right to strike the state recognised the working class as a collective entity. This was a clear recognition of the power of the working class, which the state sought to steer into vehicles constituted to administer that power. Just as individual citizens were constituted as such by the state and incorporated into it through legal and administrative mechanisms, so were collective subjects. The freedom to strike represented the recognition by the state of the collective force of the working class and the transformation of this force into the legal category of right. The right to strike represented the recognition of the formal freedom of the collective worker. In other words, trade unions were constituted by the state as the legal subjectivity of the working class.

One of the significant features of these developments is that they occurred so soon after the defeat of Chartism by the state in 1848. As the most significant working class movement after 1832, the threat posed by Chartism was a major problem for successive British governments. Yet there is a crucial difference between Chartism and the trade unions as they were constituted after 1871. Chartism was an explicitly political programme. Its six point plan for a reform of suffrage, Parliament and the relationship between property and power would have drastically changed the nature of the British state. Nonetheless it was defeated, and as we saw its defeat has been read by Anderson and Nairn as the prime example of the triumph of a pre-modern, essentially feudal, culture and politics over an emergent modern one formed by radical groups and classes. The significance of the defeat of Chartism however lies elsewhere, in the fact that it was the last working class movement in Britain that was explicitly political. After this the working class was pushed into developing an essentially 'economistic' consciousness, exemplified by trade unions after 1871. The demise of Chartism and the emergence of trade unions are therefore not incompatible. Rather, as Ellen Meiksins Wood writes,

the demise of radical republicanism betokens a historic shift of working class struggle from the state to civil society, as issues and conflicts historically rooted in the political sphere were transplanted to the economy.¹³²

The constitution of trade unions by the state is thus an unintended consequence of the defeat of Chartism and indicative of the structuring by the state of the very focus of working class action.

One of the features of Trade Union Act (1871) was the obligation to adopt rules for those unions which were registered. Registration, though voluntary, was crucial for unions since it carried an important income tax privilege. Moreover, Section Four of the Act stated that nothing in the Act shall allow a court to enforce directly certain internal union agreements and agreements between unions, thereby ensuring that the legal immunities enjoyed by unions since 1871, noted above, also related to their internal workings. However, through Section Four the state played a major role in developing the internal constitutions of the unions. Thus, in adopting rules specified by the state, most unions in the very process of their birth came to have

their internal workings and constitutions structured by the state. Contrary to Marxist writers who see unions as spontaneous organisations arising, ‘naturally’¹³³ from the working class, which the state then regulates or co-opts, this view registers the constitutive power of the state over the organisations of the working class. To the extent that organisations of collective labour are a product of working class struggle, their specific form is an outcome of their constitution by the state. Their internal workings, the space in which they operate *vis a vis* other unions, employers and the state were structured by the state from the outset.

It is through this process that trade unions were constituted by the state as one of the mechanisms through which the ‘labour problem’ could be resolved and labour regulated. Again a whole series of administrative mechanisms were developed to deal with the issue. The formation of the Labour Statistical Bureau in 1886, later to become the Labour Department (in 1893), was to collect data concerning labour, such as levels of union membership, hours of work and working class expenditure. They also had the explicit purposes of validating the stabilising and conciliatory role of trade unionism, encouraging the unions’ role as provident institutions in the community, and to ‘erode the illusion’ that the purpose of unions were to strike. Within the Department the administrators recognised that their role was to ‘manage’ and ‘contain’ new social problems, and that unions were a major tool for this purpose.¹³⁴ Moreover, once such administrative mechanisms were in place it became a natural step to involve trade union leaders in the political administration of the working class. The trade union leaders could become a section of the range of ‘expert’s or ‘specialists’ working within the administration.¹³⁵ As Hobsbawm writes,

In the policy of conciliation it seemed as natural to take unionists into the civil service...as to use their statistical services. The National Insurance Act of 1912 even made the unions into a part of the administration of health insurance as ‘approved societies’... Thence it was only a step to the modern techniques of enmeshing labour in a net of advisory and consultative bodies... The trade unions are today vital intermediaries between the state and the worker.¹³⁶

In this manner the state could subsume an element of civil society within it, the organised power of the working class, grant it an administrative function and then.

turning it against that power, use it to regulate civil society.

The final feature that emerges from the constitution of trade unions by the state is that collective bargaining becomes acceptable, if not the norm. The significance of collective bargaining is not just that it recognises the social power of labour, but that it facilitates the administrative role of trade unions, a claim that can only be fully justified through a fuller consideration of law and administration.

Law: From Contract to Administration?

During the nineteenth century the idea that there had been a shift from status to contract became common. The classic statement is Henry Maine's Ancient Law (1861),¹³⁷ but with its focus on the central feature of bourgeois law, contract, it has an obvious appeal for Marxists. Engels, for example, suggests that

by changing all things into commodities [capitalism] dissolved all inherited and traditional relationships, and in place of time-honoured custom and historic right, it set up purchase and sale, 'free' contract. And the English jurist, H.S. Maine thought he had made a tremendous discovery when he had said that our whole progress in comparison with former epochs consisted in the fact that we had passed 'from status to contract', from inherited to freely contracted conditions - which in so far as it is correct was already in The Communist Manifesto.¹³⁸

It has also been shown to be a key feature of Marshall's work on citizenship. In Britain it is closely related to what was a common assumption amongst legal theorists that there can be no such thing as administrative law in Britain, and that the development of administration is potentially fundamentally at odds with the rule of law. Dicey, for example, in his influential work on the constitution suggests that the rule of law means that

there can be with us nothing really corresponding to the 'administrative law' (*droit administratif*) or the administrative tribunals (*tribunaux administratifs*) of France. The notion which lies at the bottom of the 'administrative law' known to foreign countries is, that affairs or disputes in which the government or its servants are concerned are beyond the sphere of the civil courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs.¹³⁹

Yet in many ways contract can be said to have *declined* in importance in the nineteenth century. In his work on the rise and fall of freedom of contract Atiyah claims that there was some encroachments on freedom of contract by legislative activity by 1870, and after this date they increased considerably.¹⁴⁰ As will be seen below, some writers have in fact suggested that there was a shift not from status to contract but from contract to status. The argument put forward here however, will be that if there was a shift it was from contract to administration but that, sensitive to the problems such dichotomising leads to, as our critique of Foucault drew out, we need to think of administration in *conjunction* with law, and consider them *integrated on a continuum*.

The late-nineteenth century saw a decline in the role of contract. Instead of relations being governed by contract and Dicey's 'ordinary' courts they become increasingly governed by administration and administrative law, part of the development of the state. In other words, the development of the state took the form of administration, and this necessitated a decline in the role of contract. This appeared to pose a threat to the traditional institutions of English law and the rule of law. One of the reasons that contract was historically so central, and therefore played the role that it did in theory, was that as an explicitly legal relation it could be policed by the courts; at the same time the courts would regulate legal relations according to the laws laid down by Parliament; and finally accountability lay with Parliament

The argument here is that administration, like law, exists to facilitate the constitution of social and political order by the state. This means the regulation, by the state, of both individual and collective relations. We shall briefly outline three examples of this, which will then allow us to reconsider the idea of 'social rights' and the significance of trade unions.

We have seen how the Poor Law Commissioners sought to work outside of Parliamentary control. Because their 'general rules' were subject to Parliamentary scrutiny they often issued individual directives to each Poor Law authority. This had the effect of overcoming any Parliamentary accountability and/or obstruction. This was far from an isolated trend in the nineteenth century. The development of legislation regulating factories expanded after 1832. Initially the concern was with

the safety and conditions for women and children, later focusing on hours of work and general safety. Legislation prior to 1832 had been passed - the Act for the Preservation of the Health and Morals of Apprentices (1802), for example - but such Acts failed because there existed no machinery for enforcing them. Criminal sanctions did exist (however small), but their enforcement was highly dependent upon the co-operation of the employers, and the local justices of the peace. Where the Factory Act of 1833 differed was not in the increasing of criminal penalties but in the introduction of centralised administrative initiative. Criminal sanctions were relegated to an ancillary role; the primary role was to be taken by administrative regulation.¹⁴¹

Similarly in the mines, the perfectly legal 'contractual' relationship between worker and employer, and the conditions in which the worker operated were considered perfectly acceptable according to the existing legal institutions and consistent with the law of contract. The fact that in one three year period over 3000 lives were lost but no single conviction obtained appears irrelevant. As Arthurs notes

No more dramatic illustration can be found of the moral and institutional imperatives that gave force and shape to the growth of administrative law. People were being maimed, killed and degraded; the law - the formal legal system - had nothing to say about the matter; a new normative system and new techniques of enforcement were desperately needed. Only the administration could respond to that need.¹⁴²

Our final example comes from the developments of 1906-11, which as we saw in the last chapter consolidated the bond between labour, capital and state. With the development of administrative mechanisms the judiciary seemed an obvious institution to play a role in its operation. However, with their entrenched notions concerning freedom of contract and trade, the judges were thoroughly convinced that the development of administration was incompatible with the rule of law. In the case of the law concerning workmen's compensation for example, the judges assumed that because trade and therefore contracts were free, compensation could be treated as a contractual issue; the wage was the compensation for becoming sick or being injured. But from the 1870s the increasing political importance of the

issue culminated in the Employer's Liability Act (1880) limiting the employers' right to invoke the defence of common employment, and the Workmen's Compensation Act (1897) to provide compensation through insurance and to have cases settled by agreement or arbitration. In practice however the arbitration came to be undertaken by County Court judges, some even going to the House of Lords. The government perceived this as the judiciary frustrating its intentions. We can add that it was also due to the judiciary's insistence on the importance of contract and their resistance to administration.¹⁴³ The outcome was that the developments in welfare legislation from 1906-1911 were explicitly framed to place the administration of the schemes outside of the courts. The pension schemes of 1908 were to be administered by County Councils or Borough Councils, with appeals going to the Local Government Board, whilst disputes under the 1911 Act were to be settled by 'courts' of referees consisting of employers and workmen with appeals being heard by the Insurance Commissioner. In other words Dicey's 'ordinary' courts had been deliberately bypassed in favour of administration, and the judiciary were excluded from crucial dimensions of the development of the British state.¹⁴⁴

It is significant of course that the three examples are all concerned with work and the means of subsistence. Whilst the contract of employment appears to be the most obvious example of private law it is subject to a myriad number of mechanisms before, during and after it has been formed. As Karl Renner notes,

Since the middle of the [nineteenth] century the state is no longer content merely to hold the mace and the scales, it begins to take an active part in administration. New norms are made year by year in increasing numbers in the form of statutes, orders and instructions of the administrators of the state. Administrative law develops into a special branch of legal analysis, and economic administration soon becomes the most extensive part within this branch. Grievances arise out of the application of the law of property and the contract of employment to the factory, and therefore administrative law must step in. Regulations relating to the normal working day, factory inspection, and protection of women and children are institutions of public law which increasingly supplement these institutions of private law. Insurance against sickness, accident and old age follow suit, public labour exchanges replace the private labour market, and so on. In the end the relations of labour are as to nine parts regulated by public law, and the field of influence of private law is restricted to the remaining tenth.¹⁴⁵

The existence and functioning of the wage-labour relation, then, can only make sense when thought of through administration and administrative law, which develop as a means of policing the working class. One is tempted to say that although the working class was entered the sphere of right as citizens, new forms of law were needed to regulate them as the class of poverty and labour.

This also sheds some light on the nature of the problems found in Marshall's account of citizenship. By thinking of the third stage as granting social *rights* to citizens Marshall forces his analysis into the framework of (contractual) law. But the key feature of this third stage, welfare, is best understood through the interface of administration and law being traced here. The provision of benefits in order to provide for a certain level of income is best conceptualised not as a right but as a need formally recognised by the administration. Unemployment benefit is granted not on the basis of citizenship but because the administration is satisfied that specific conditions have been fulfilled; that is, that one is a *bona fide* proletarian.¹⁴⁶ And complaints that the need is not met are adjudicated not in courts of law concerning the 'right' to welfare but within the quasi-judicial tribunal system and concern questions of maladministration.

Dicey claims that the encouragement given to collective bargaining reduces the contractual capacity of both workmen and masters, and that 'the rights of workmen in regard to compensation for accidents have become a matter not of contract but of status'.¹⁴⁷ Likewise MacDonagh suggests that from the 1870s

'freedom of contract' would no longer stand where it conflicted with collective bargaining or mass power; and the trade union now rested safely upon the peculiarity - in fact, uniqueness - of its status in law.¹⁴⁸

One feature that lends weight to the claim that there has been a shift away from contract is that collective bargaining agreements do not take the form of a contract and are generally not legally enforceable as contracts - as illustrated by *Ford Motor Co. v A.E.U.* (1969)¹⁴⁹ where law shows its power to regulate and yet show deference to administration. Kay and Mott, amongst others, suggest that collective bargaining agreements are *de facto* contracts, stating that there were no judgements on the issue until 1971.¹⁵⁰ The 1969 decision shows this is not the case. Likewise

the Donovan Commission (1968) argued that collective agreements are not legally binding contracts since 'the parties do not intend to make a legally binding contract and without both parties intending to be legally bound there can be no contract in the legal sense'.¹⁵¹ Whether they are de facto contracts or not contracts at all Kay and Mott are correct to argue that the issue is not their juridical status but the fact that they can exist at all, and this they can do only because of the constitutive power of the state to define trade unions as juridical subjects. This gives the appearance that the agreements they enter are contracts, but in fact *the outcome of collective bargaining is administrative agreements*. As such 'by participating in continual collective bargaining the trades unions are simply engaging in administration'.¹⁵² In this sense whilst contract may have declined the shift has been not so much from contract to status, but 'from contract to administration, from private to public law'.¹⁵³

Yet this in turn is also problematic. It is too formulaic, and opens up the very difficulties found in Foucault's account of the demise of law and rise of administration. Working with simple conceptual dichotomies contract vs. status, contract vs. administration, private vs. public law, courts vs. tribunals,¹⁵⁴ and so on, encourages one to think of them as historical 'stages' (which then invites us to regard one as more 'modern' than the other). This oversimplifies both the complexity of the historical developments and the theoretical tools necessary to conceptualise them. Instead of a simple oppositional dichotomy we should explore the *law and administration continuum*, an exploration resting not on a rejection of one in favour of the other, but on a recognition of their simultaneous integration and separation.

The fact that many relations in modern society are governed by administration rather than contract does not mean that they exist in some kind of legal vacuum. Rather the development of administration has seen the necessity of the rise of administrative law through which disputes can be arbitrated. Bodies of law are developed within and applied by the administration. It is in this sense that the administration functions in a quasi-legislative and quasi-judicial manner. Quasi-legislation operates through delegated legislation or through government departmental pronouncements as to the official point of view on ambiguous points

in statutes; quasi-judicial action can be seen in tribunals: some tribunals exercise judicial functions whereas others exercise administrative functions in a judicial form, and it is symptomatic of the ambiguous ('quasi') nature of these bodies that they are called 'administrative tribunals' rather than the more indicative 'administrative court'.¹⁵⁵

The development of quasi-legislative and quasi-judicial administration occurred from 1832 and was fully in place by 1918. It was integral to the development of the bourgeois state. As Roberts notes:

the central departments sat as judicial boards, much as did regular courts of law. But the line between the judicial and administrative was never clear... The central administration was asserting itself. Gradually...they were gaining judicial powers as well as legislative powers, thus laying the basis of the modern administrative state.¹⁵⁶

Moreover, any attempt to suggest that ultimately the courts have the power of judicial review over administration, can reassert the rule of law as a matter of course and that therefore the law has ultimate power over administration is severely curtailed by the courts own deference to the power of administration. Since the development of administration at the heart of the state a whole range of judicial decisions have been made to the effect that wide areas of the administration are simply out of the jurisdiction of the courts. The key decision for our purposes is the Court of Appeals ruling in 1914 that the Local Government Board was not bound to follow court procedures in exercising its quasi-judicial powers.¹⁵⁷ In other words, even the law now accepts the centrality of administration and uses its power to confirm administration's domination. And yet administration *needs* law to perform this act of confirmation. Because law structures social reality its deference to administration is a necessary requirement for administrative power.

To say that with the development of administration the importance of the contract declines should not be read as suggesting that the importance of the juridical subject declines too. Far from it. For the juridical subject is of course both a legal subject and an object of administration. Administration depends for its existence upon the legal subject and in the process of administering it reinforces

its significance. We therefore need to extend our earlier formulations concerning the constitution of the subject. For it should now be clear that *the modern subject is constituted through both law and administration. The citizen is both a subject of rights and an object of administration and is constituted as such in one and the same historical moment.* It is this historical moment which sees the barrier between state and civil society, always artificial and subject to the struggles of contesting forces, being closed off.

Rather than there being a split or contradiction between law and administration, they are in fact entirely compatible. They are limited by and dependant upon each other, and as such are held together in a permanent tension. The point, of course, is that they are interdependent; they are ‘mythically integrated’, and to this extent they are different forms of the same activity: the preservation of the state.¹⁵⁸ That this must be so is due to the necessity for both to be used by the state in its ordering of civil society. Law and administration are the media through which the state constitutes, orders, structures and closes off the bodies, human and non-human, of civil society. Law and administration are thus important precisely because they are not merely ‘superstructural’.

This distinguishes the approach from perhaps the most sophisticated account of law given in the Marxist tradition, that of E.B. Pashukanis.¹⁵⁹ Pashukanis has been widely praised for breaking with the analysis of law at the level of content, and thereby breaking with a crude instrumentalist approach.¹⁶⁰ Accounts of law on the basis of its content are easily criticised. First, it becomes difficult to show how the content pure and simple of law has a class basis to it.¹⁶¹ Second, and more substantively, an analysis of law that remains at the level of content falls too easily into an instrumentalist account of law and therefore the state. The strength of Pashukanis’ analysis is that it is centred on the legal form and rooted in the categories developed by Marx for the analysis of commodities. The following critique is intended only to draw out the limits of Pashukanis’ account: its weakness in dealing with law *and* administration, the failure to recognise the constitutive power of the state and the absence of any concept civil society.

Pashukanis recognises that every legal relationship is between subjects. The subject is the atom of legal theory. Commodities, argues Pashukanis, need owners.

The exchange of commodities requires subjects who are free to own and capable of owning. This exchange must be a relationship in which each subject of exchange recognises the other subject as possessing a will, legally constituted, which makes him free and equal to other owners of commodities.

The legal subject is thus an abstract owner of commodities raised to the heavens. His will in the legal sense has its real basis in the desire to alienate through acquisition and to profit through alienating. For this desire to be fulfilled, it is absolutely essential that the wishes of commodity owners meet each other halfway. This relationship is expressed in legal terms as a contract....At the same time the legal form...acquires a material basis in the act of exchange.¹⁶²

Pashukanis notes that although the legal form of property qualifies all people as being equally eligible for property it in no way makes property owners of them. It is the *potentiality* of property ownership to the formation of juridical subjects rather than its actuality that is important, a point made above in reference to working class citizenship and the franchise.

This conceptualisation of law has been widely drawn upon by Marxists.¹⁶³ Indeed there is much to be said for Pashukanis' work. Just as products take the form of individual commodities (objects), so people take the form of individual citizens (subjects). In each case an exchange of things which are unequal becomes possible, revealing their twofold character and their inherent contradiction. Analogous to the process of commodity production, the form of the law constitutes human individuals as legal subjects, thereby formally obliterating their differences. The law functions as the universal equivalent, and in doing so human need is replaced by equal 'rights'.¹⁶⁴ But because Pashukanis' focus is on the contract his formulations are, strictly speaking, applicable only to private law. This means that both criminal law and public law are omitted from Pashukanis's account. By imposing an 'identity' between commodity form and the legal form it becomes extremely difficult to offer an account of the various *forms* of law.¹⁶⁵ Simply deriving the form of law from commodity relations subsumes all law into private contractual law. Pashukanis either ignores or denies the significance of public law. Because his concern is with the legal relationship between juridical subjects he perceives public law as merely a reflection of the private law form in the political

sphere. The problem here is both historical and theoretical. Whilst it is true to say that private law is and has been of primacy in the development of the state, public law became increasingly important towards the end of the nineteenth century, as we have seen, central to the development of the state and forms of political administration.¹⁶⁶ This is closely related to the fact that Pashukanis does not recognise the active constitutive power of the state; indeed, when dealing with the state Pashukanis, despite his major insights into law, does not move very far beyond the formulations found in Lenin and the Leninist tradition.

Pashukanis conceives of law as having an origin independent of the state, which stands outside of the constitution of political order. 'The state authority introduces clarity and stability into the structures of law, but does not create the premises for it, which are rooted in the material relations of production'.¹⁶⁷ Forcing materialist analysis into an economistic straightjacket, Pashukanis conceives of juridical subjects as the product of economic relations pure and simple; the state merely stands above and ensures stability. Thus the law and the state passively recognise an economic reality that is already given, and regulate it accordingly. It is for this reason that he can only conceive of the state in terms derived from his analysis of private contractual law: the state is merely a 'collective will' or 'collective person'.¹⁶⁸ Pashukanis' later self-criticism of 1930 goes little way to correcting these errors, for whilst he accepts that his earlier analysis had pushed the role of the state into the background with a 'narrow' approach to law, and he registers the more active role of the state, he still insists that juridic concepts arise out of the market economy.¹⁶⁹ Moreover, the extensive focus on *juridic* subjects means Pashukanis does not have a theoretical space for an analysis of administration as a major tool for the constitution of order. Here we can use Foucault against Pashukanis. Foucault, like Marx and Pashukanis, recognises the significance of juridic subjects in the emergence of a parliamentary regime protecting rights and formal freedoms, but that these formal freedoms and equalities mask other forms of domination and power. But he goes further and focuses on the 'other, dark side of these processes' namely disciplinary mechanisms.

The general, juridical form that guaranteed a system of rights that were egalitarian in principle was supported by [the] tiny, everyday, physical

mechanisms, by all those systems of micro-power that are essentially non-egalitarian and asymmetrical that we call the disciplines. And although, in a formal way, the representative regime makes it possible...for the will of all to form the fundamental authority of sovereignty, the disciplines provide, at the base, a guarantee of the submission of forces and bodies. The real, corporal disciplines constituted the foundation of the formal, juridical liberties.¹⁷⁰

The formal freedoms enjoyed by legal subjects make certain power processes possible, but are dependant upon other mechanisms of power. For Foucault then, the formal freedoms possessed by juridical subjects do not contradict other forms of power relation but *depend* on them as their foundation. It is for this reason that Foucault seeks to move beyond the juridical model of power, to an analysis focusing on the continuum of apparatuses of discipline and regulation - medical, penal, administrative and so on.

In this sense Pashukanis' focus on juridical subjects is too narrow, and a materialist analysis needs to recognise the strength of Foucault's point here. For the human individual is made not just a legal subject, but also an object of administration. The constitution of political order requires that this be the case. Given this an analysis concerned solely with subjects of law will not be sufficient. Moreover, as Foucault also shows, one has to consider the productive aspects of power. The argument here is that the state's constitutive power over civil society is expressed through the development of law and administration. Pashukanis, in perceiving the state as a collective will that regulates the inequalities of the juridical subjects in the market, does not have the theoretical tools to deal with this.

Consequently Pashukanis remains within a tradition that conceives the state merely as a tool of repression, simply a special force for oppressing the working class. The active constitutive role of the state is lost, and with it any attempt to develop a materialist account. It is undoubtedly the case, as Redhead suggests, that Pashukanis' work on law is flawed because it operates in isolation from a theory of the state.¹⁷¹ The rooting of the analysis in Marx's categories developed for the critique of political economy, justified on the grounds that juridical subjects are the product of economic relations, is in effect a crude base-superstructure analysis. Yet even as a base-superstructure analysis it is weak, for, lacking any account of the

state beyond a crude economism Pashukanis also follows Lenin in lacking any concept of civil society. This has the effect of evacuating his account of any conception of struggle, which allows him to obscure the extent to which the law is a form of class struggle and a product of it, one consequence of which is administration. Rather than such a crude base-superstructure analysis, law, like the state, is best conceived as a dependent element within a totality but which constitutes the character of that totality, a totality subject to continual struggle.

But if law is a dependent element within a totality which also constitutes the character of that totality, then the same must be said for administration. As a continuum, law-and-administration, the functions of both law and administration have become mythically integrated, to the extent that the citizen finds him or herself enveloped in the processes and procedures of law-and-administration. Linking law and administration in this way allows administration to be thought of as integral to the operation of state power. Just as law is imbricated throughout social relations, policing them accordingly, so administration has assumed the role of supporting and sustaining law in this task. It is not so much that there has been a *shift* from contract and law to status or to administration, or that law has been *displaced* by administration, but that there has been a shift in the nature of the functioning of state power such that law's role in the policing of civil society has been bolstered through the development of administrative mechanisms.

Notes to Part III

Introduction

1. G.W.F. Hegel, Elements of the Philosophy of Right trans. H.B. Nisbet (Cambridge, Cambridge University Press, 1991), Preface. The Knox translation (Oxford, Oxford University Press, 1967) has it as Fichte wanting people to *sign* their passports and have their likenesses painted on them.
2. Ibid. para. 261. Details concerning the passport taken from A Brief History of Passports (London, U.K. Passport Agency, 1992). See also B. Turner, Citizenship and Capitalism (London, Allen & Unwin, 1986), p.80, 119, 128.
3. M. Foucault, 'The Subject and Power', Afterword to H. Dreyfus & P. Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics (Brighton, Harvester, 1982), p.208.
4. Turner, Citizenship and Capitalism op.cit. p.85. See also his 'Contemporary Problems in the Theory of Citizenship' in Citizenship and Social Theory, edited by B. Turner (London, Sage, 1993).
5. T. H. Marshall 'Citizenship and Social Class' in T.H. Marshall & T. Bottomore, Citizenship and Social Class (London, Pluto Press, 1992), p.18. Marshall's account of citizenship is discussed in Chapter Five below.
6. Turner, 'Contemporary Problems in the Theory of Citizenship' op.cit. p.10.
7. E.P. Thompson, The Making of the English Working Class (Harmondsworth, Penguin, 1968).

Chapter Four

1. On Captain Swing see E. Hobsbawm and G. Rude, Captain Swing (London, Lawrence and Wishart 1969).
2. Quoted in M. Bentley, Politics Without Democracy 1815-1914 (London, Fontana, 1984), p.80.
3. N. Gash, Aristocracy and People (London, Edward Arnold, 1979), p.146; A. Wood, Nineteenth Century Britain 1815-1914 2nd edition (London, Longman, 1981), p.80; E. Halevy, The Triumph of Reform (Vol. 3 of History of the English People in the Nineteenth Century) 2nd Edition (London, Ernest Benn, 1950), p.15-59; E.P. Thompson, The Making of the English Working Class (Harmondsworth, Penguin, 1968), p.88-90.
4. This is a point that will be developed in the following chapter, where it is argued, in contrast to Thompson, that the working class was not formed until after 1832, and that this 'making' occurred simultaneously with its incorporation.
5. Macaulay, speech, 2 March 1831, reprinted in J.B. Conacher, The Emergence of British Parliamentary Democracy in the Nineteenth Century (London, John Wiley, 1971), p.24; W. Bagehot, The English Constitution (London, Fontana, 1963), p.278-80.
6. Bentley op.cit. p.88.
7. Gash op.cit. p.152; Wood op.cit. p.85. On bribery and corruption see A. Ball, British Political Parties (London, Macmillan, 1987).
8. Gash op.cit. p.152.
9. For discussions of bourgeois revolution see P. Anderson, 'The Notion of Bourgeois Revolution' in English Questions (London, Verso, 1992); E.M. Wood, The Pristine Culture of Capitalism: A Historical Essay on Old Regimes and Modern States (London, Verso, 1991); C. Mooers, The Making of Bourgeois Europe: Absolutism, Revolution, and the Rise of Capitalism in England, France and Germany (London, Verso, 1991); R.F. Hamilton, The Bourgeois Epoch: Marx and Engels on Britain, France and Germany (Chapel Hill & London, University of North Carolina Press, 1991).
10. K. Marx, 'Review of Guizot's Book on the English Revolution' in Surveys From Exile (Harmondsworth, Penguin, 1973), p.254-5, first emphasis added.
11. S.F. Wooley, 'The Social Composition of the Parliament in 1833' in The Great Reform Bill of 1832, edited by G.A. Cahill (Massachussetts, Heath, 1969), p.56. 60.
12. W.O. Aydelotte, 'Social Composition and Interests in the Parliament of 1841-1847' in Cahill, *ibid.* p.64.

13. W.L. Guttsman, The British Political Elite (London, Macgibbon and Kee. 1965), chs. 2 and 4; P. Corrigan and D. Sayer, The Great Arch 2nd edition (Oxford, Blackwell, 1991).
14. G. Kitson Clark, 'The Agricultural Interest and Corn Law Repeal' in Cahill (ed) The Great Reform Bill of 1832 op.cit. p.72.
15. D.C. Moore, 'The Other Face of Reform', Victorian Studies, Vol.5 (1961); 'Concession or Cure: the Sociological Premises of the First Reform Act', The Historical Journal, Vol.9 No.1. (1966). For a critique and discussion see E.P. Hennock, 'The Sociological Premises of the First Reform Act: a Critical Note', Victorian Studies, Vol. 14 (1971).
16. Marx, 'The British Constitution', SE p.282.
17. Marx, 'The Chartists', SE, p.263.
18. Poulantzas even suggests that the aristocracy act as a 'cloak' for the bourgeoisie; see his 'Marxist Political Theory in Britain', New Left Review, 43 (1967).
19. The main works are: P.Anderson, 'Origins of the Present Crisis', New Left Review, 23 (1964); 'Components of the National Culture', New Left Review, 50 (1968); 'The Figures of Dissent', New Left Review, 161 (1987); all reprinted in English Questions (London, Verso, 1992). Also 'Socialism and Pseudo-Empiricism', New Left Review, 35 (1966). T. Nairn, 'The British Political Elite', New Left Review, 23 (1964); 'The English Working Class', New Left Review, 24 (1964); 'The Anatomy of the Labour Party', New Left Review, 27 and 28 (1964); 'The British Meridian', New Left Review, 60 (1970); 'The Twilight of the British State', New Left Review, 101 (1976), reprinted in The Break-up of Britain (London, Verso 1981).
20. Anderson, 'Origins of the Present Crisis', English Questions op.cit. p.22.
21. Nairn, 'The British Political Elite' op.cit. p.20.
22. E.P. Thompson, 'The Peculiarities of the English', The Socialist Register 2 (1965), reprinted in The Poverty of Theory (London, Merlin, 1978), p.255. Page references are to the latter.
23. A theme developed outside Marxism too, for example in M.J. Wiener, English Culture and the Decline of the Industrial Spirit 1850-1980 (London, Penguin, 1985). Also see W.D. Rubinstein, Capitalism, Culture and Decline in Britain, 1750-1990 (London, Routledge, 1993).
24. Anderson, 'Origins' op.cit. p.24.
25. Nairn, 'The Twilight of the British State' in The Break-up of Britain op.cit p.29.

26. This is similar to the 'routes to the modern world' traced by Barrington Moore Jr., who distinguishes between three routes: bourgeois revolution leading to capitalism and political democracy, revolution from above leading to authoritarian capitalism (fascism), and peasant revolutions leading to communism. B. Moore Jr., Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World (London, Penguin, 1967). For a comparison of Barrington Moore and Anderson see R. Johnson, Peculiarities of the English Route: Barrington Moore, Perry Anderson and English Social Development (Birmingham University, Centre for Contemporary Cultural Studies Occasional Paper, 1976). Anderson himself makes use of the distinction between revolution from above and below in his Lineages of the Absolutist State (London, New Left Books, 1974), p.431. On the 'bourgeois paradigm' more generally see E.M. Wood, Pristine Culture of Capitalism op.cit.

27. Thompson, 'The Peculiarities of the English' op.cit.

28. D. Blackbourn & G. Eley, The Peculiarities of German History: Bourgeois Society and Politics in Nineteenth-Century Germany (Oxford, Oxford University Press, 1984); R.J. Evans, 'The Myth of Germany's Missing Revolution', New Left Review, 149 (1985). The outcome of looking for peculiarities leads to some peculiarities of its own. As Eley and K. Nield write: 'while in Britain the absence before 1914 of an independent working class party with mass support has tended to be seen as the abnormality in need of special explanation, in Germany it is precisely the existence of such a party that has attracted the attention'; 'Why Does Social History Ignore Politics?', Social History, Vol.5 No.2 (1980), p.256.

29. A.J. Mayer, The Persistence of the Old Regime: Europe to the Great War (London, Croom Helm, 1981).

30. Thompson op.cit.; Evans op.cit. p.82; R. Johnson op.cit. p.21; M. Barratt Brown, 'Away With All the Great Arches: Anderson's History of British Capitalism', New Left Review, 167 (1988), p.25; E. Hobsbawm, Industry and Empire (Harmondsworth, Penguin, 1968), p.16. Also useful here is Marx's discussion in Chapter 29 of Capital Vol.I (Harmondsworth, Penguin, in association with New Left Review, 1976). Simon Clarke rightly points out that Anderson and Nairn's formulations encourage the 'delusion' that the British ruling class was not capitalist. See S. Clarke, 'The State Debate' in The State Debate, edited by S. Clarke (London, Macmillan, 1991), p.19.

31. Anderson, 'Origins' op.cit. p.30.

32. Poulantzas, 'Political Theory in Britain' op.cit. In fact, the dependence on Gramsci goes further than the use of hegemony as a conceptual tool. The attentiveness to the peculiarities of national history takes up one of Gramsci's specific concerns, as does the concern to use the knowledge of this peculiarity for an understanding of the strategy the Left must use. For a discussion see D. Forgacs, 'Gramsci and Marxism in Britain', New Left Review 176 (1989). Anderson later concedes that the Gramscian elements of the analysis were given too 'cultural' a turn - see 'Figures of Dissent' in English Questions op.cit. p.167.

33. Anderson, 'Origins' p.33.

34. Nairn, 'The Twilight of the British State' op.cit. p.49. Thompson suggests that the 'hegemony' of one class and the 'corporate' nature of the other in the Anderson-Nairn thesis is simply a reformulation of the way socialists have traditionally used the terms 'revolutionary' and 'reformist' and as such does not constitute a new tool of analysis. This is misleading, for two reasons. Firstly, as Anderson himself responds, this implies that in describing the ideology of Victorian imperialism as 'hegemonic' Anderson and Nairn consider it to be 'revolutionary'. an unfair portrayal. (See Anderson, 'Socialism and Pseudo-Empiricism' op.cit. p.27). Secondly, and more importantly, this fails to see that the use of 'corporate' here indicates a particular conceptualisation of the working class as a passive object. This needs addressing because a conceptualisation of the working class, as an active historical agency (or at least potentially so) is fundamentally entwined with the conceptualisation of the state. We will return to this point below.

35. Anderson, 'Origins of the Present Crisis' in English Questions (London, Verso, 1992), p.26; Nairn, 'The English Working Class' New Left Review 24 (1964).

36. Nairn, 'The Twilight of the British State' op.cit. p.50. Nairn even suggests that fascism and Stalinism are a product of the failure of the working class to conduct a successful revolution.

37. I have taken the phrase 'concepts in search of theories' from R. Johnson, 'Educating the Educators: "Experts" and the State 1833-9' in Social Control in Nineteenth Century Britain, edited by A.P. Donajgradski (London, Croom Helm, 1977). Johnson only uses it to describe 'social control'.

38. A.P. Donajgradski, (ed.) Social Control in Nineteenth Century Britain op.cit.; D. Melossi, The State of Social Control (Cambridge, Polity, 1990); P.Thane, (ed) Origins of British Social Policy (London, Croom Helm, 1978). The concept also slips into other accounts. See for example F. Piven & R. Cloward, Regulating the Poor: The Function of Public Welfare (London, Tavistock, 1974), p.3, 7.

39. J.R. Hay, 'Employers' Attitudes to Social Policy and the Concept of 'Social Control', 1900-1920' in Origins of British Social Policy, edited by P.Thane op.cit. p.108; see also A.P. Donajgradski, 'Introduction' to Social Control in Nineteenth Century Britain op.cit. p.9; D. Melossi, The State of Social Control op.cit. p.3. 172-175.

40. Quoted in Hay ibid. p.109.

41. J. Brown, 'Social Control and the Modernisation of Social Policy, 1890-1929' in Thane (ed.) op.cit. p.128.

42. A point made by J. Mayer, 'Notes Towards a Working Definition of Social Control in Historical Analysis' in Social Control and the State, edited by S.Cohen & A.Scul (Blackwell, Oxford, 1983), p.22. However, Mayer goes on to suggest that to overcome this a broadening of the social control concept is needed, which

as far as I can see would only replicate and multiply the problems he himself recognises. In contrast S. Cohen recognises the problems with the social control concept and seeks to simultaneously broaden and narrow it; see S. Cohen, 'Social-Control Talk: Telling Stories about Correctional Change' in D. Garland & P. Young (eds) The Power to Punish: Contemporary Penalty and Social Analysis (Aldershot, Gower, 1989), p.102. For critiques of the social control concept see G. Stedman Jones, 'Class Expression Versus Social Control? A Critique of Recent Trends in the Social History of Leisure', History Workshop, 4 (1977), reprinted as Chapter Two of his Languages of Class (Cambridge University Press, 1983) and as Chapter Two in Cohen and Scull op.cit; F.M.L.Thompson, 'Social Control in Victorian Britain', Economic History Review, Vol.34 No.2 (May 1981); M.Wiener, 'Social Control in Nineteenth Century Britain', Journal of Social History, 12 (1978-9); K.Williams From Pauperism to Poverty (London, Routledge, 1981), p.136-140.

43. V. Bailey in Donajgrodzki op.cit.; see also Wiener op.cit. p.318.

44. Hay op.cit. p.110.

45. Stedman Jones, 'Class Expression versus Social Control' op.cit. p.164.

46. Donajgrodzki op.cit. p.10; H.F. Moorhouse, 'History, Sociology and the Quiescence of the British Working Class' Social History Vol.4 No.3 (1979), p.484.

47. S. Cohen & A. Scull, 'Introduction: Social Control in History and Sociology' in Cohen & Scull (eds) Social Control and the State op.cit. p.6. As Nikolas Rose points out, Cohen and Scull end up offering a revamped version of social control as a solution to its own failure. N. Rose 'Beyond the Public/Private Division: Law, Power and the Family' in P. Fitzpatrick & A. Hunt (eds) Critical Legal Studies (Oxford, Blackwell, 1987) p.76 n.28. Compare my comment on Cohen in note 42 above.

48. Stedman Jones op.cit. p.164; Sugarman & Rubin, 'Introduction: Towards a New History of Law and Material Society in England, 1750-1914' in Law, Economy and Society: Essays in the History of the English Law 1750-1914 edited by D. Sugarman & G. Rubin (Oxon, Professional Books, 1984), p.62.

49. Hay op.cit. p.108; Donajgrodzki op.cit. p.13; Melossi p.4, 173. Donajgrodzki claims that the social control concept is also compatible with consensualist and functionalist arguments.

50. G. Eley & K. Nield, 'Why Does Social History Ignore Politics?' Social History Vol.5 No.2 (1980), p.252; K. Nield & J. Seed, 'Waiting for Gramsci' Social History Vol. 6 No.2 (1981), p.210.

51. R. Johnson, 'Educating the Educators' op.cit. p.91. see also his 'Notes on the Schooling of the English Working Class, 1780-1850' in Schooling and Capitalism, edited by R. Dale et.al (eds) (London, Routledge, 1976) where he suggests that 'class-cultural control' is better than 'social control'.

52. The attempt at utilising some of Gramsci's other concepts in neo-Gramscian fashion can be seen in alternate accounts of state development in Britain. In their contribution to Crises in the British State 1880-1930, edited by M. Langan & B. Schwarz (London, Hutchinson, 1985), Hall and Schwarz suggest that the period at issue contained a series of crises within the state, signalling a sharp historical discontinuity from the preceding period. This in turn has been characterised as a crisis of liberalism from which there emerges a 'New Liberalism'. From these developed a series of collectivist forms in order to maintain state regulation, in turn leading to a redefinition of the boundaries between the state and civil society. On one level this is all in accord with Gramsci's own perception of the increased complexity of the state from 1870, the growth of civil hegemony and consequently the need to develop a war of position. From this Hall and Schwarz suggest that 'Gramsci conveys...the reconstitution of the relations between state and civil society, the expansion of the very idea of 'politics' and the incorporation of the masses in the nation states of the late nineteenth century' (p.12). Hall and Schwarz claim that the whole historical process, including the development of the socialist movement, the extension of the franchise, the fractions within the ruling class, the development of liberalism, the emergence of collectivism, the growth of state regulation, and the recognition that each particular national case has its own peculiarities, can be best understood through Gramsci's concept of 'passive revolution', in which 'revolution' is installed from above in order to forestall a threat from below but in which the masses do not take part or win the political initiative. This marks a fundamental reordering of state and civil society. Thus 'in Britain the political strategies which predominated after the First World War formed a distinctive passive transformation'; the ideologies of new liberalism and Fabianism were in fact theorizations of passive transformation (p.25-7).

The trouble with this is that it actually does very little to *explain* the development of the British state in the period. Central changes in a number of areas are noted, quite clearly developments of some significance. These are then brought together under the heading 'passive revolution' whereby the concept is expected to somehow act as an explanatory tool; but in fact it merely acts to *impose* a Gramscian concept. This is perhaps best highlighted by referring back to Gramsci's own work, in which the concept also has these difficulties. In the Prison Notebooks Gramsci uses 'passive revolution' to describe both a revolution without mass participation - the modernisation of the state through a series of reforms - and a 'molecular' social transformation - where the bourgeoisie slowly exerts its pressure on the official political forces. As such it is tempting to think of it as a Gramscian version of 'bourgeois revolution'. Yet in his 'Notes On Italian History' Gramsci uses this in relation to a whole range of developments concerning the Italian as well as other European states. The whole of European history from 1789 is said to contain a passive aspect, through to the New Deal and fascism (Selections From prison Notebooks [p.118-20]. See also P. Ginsborg, 'Gramsci and the Era of Bourgeois Revolution in Italy' in Gramsci and Italy's Passive Revolution, edited by J. A. Davis (London, Croom Helm, 1979) and the Editor's comments to the Notebooks [p.46]).

The point is that with a seemingly two-fold definition, and a diverse range of historical events to which it can apply, the concept appears to work at such a level of generality that it lacks explicit explanatory power. It may be that at least with

the concept 'passive revolution' Gramsci recognised that states do respond and develop in order to avoid non-passive revolutionary transformation, but as a theoretical tool for examining specific periods and particular states it lacks specificity. This is reflected in Hall and Schwarz's introduction in which the concept is brought in to provide a particular theoretical position but without adding a great deal to the otherwise useful analysis. What follows from this is that where a Gramscian concept appears useful it is used to *describe* the situation, on the assumption that this is explanation enough. This also applies to other Gramscian concepts: the accumulation of knowledge and the administration of the groups which the knowledge concerns is performed by 'organic state intellectuals' (Hall and Schwarz, p.19).

All of this is framed in the central Gramscian concept of 'hegemony'. The whole period is conceptualised as a crisis of hegemony, in response to which the nature of the political underwent a profound transformation. After this transformation bourgeois hegemony could be restated albeit in an altered form.

53. Melossi, The State of Social Control op.cit. esp. p.169-176.

54. Ibid. p.185.

55. Ibid. p.184.

56. The link between the approaches outlined here is consolidated when one considers that those seeking to use a Gramscian approach as outlined above, find that certain Foucauldian concepts are compatible with their overall position. Thus Hall and Schwarz claim that the developments in the British state which they consider to be a form of passive revolution can also be considered to be an example of Foucault's 'proliferation of discourses' in which new social subjects appear as potential objects for regulation. Hall and Schwarz op.cit. p.19. See also R. Davidson's slippage between 'control' and 'discipline' in Whitehall and the Labour Problem in Late-Victorian and Edwardian Britain op.cit. p.157-60.

57. J. Foster, Class Struggle and the Industrial Revolution (London, Weidenfield & Nicolson, 1974), p.254, emphasis in the original. See also his 'British Imperialism and the Labour Aristocracy' in J. Skelley (ed.) The General Strike, 1926 (London, Lawrence & Wishart, 1976).

58. R. Gray, The Labour Aristocracy in Victorian Edinburgh (Oxford, Clarendon Press, 1976), p.188-9.

59. F. Engels, 'England in 1845 and 1885' reprinted as part of his 1892 'Preface' to the English edition of The Condition of the Working Class in England (London, Granada, 1969), p.31.

60. V.I. Lenin, Imperialism, the Highest Stage of Capitalism, esp. the 'Preface to the French and German editions'.

61. G. McLellan, Marxism and the Methodologies of History (London. Verso, 1981), p.209.

62. E. Hobsbawm, 'The Labour Aristocracy in Nineteenth Century Britain' in Labouring Men op.cit. p.322. Also see his 'Lenin and the "Aristocracy of Labour"' in Lenin Today, edited by P. Sweezy & H. Magdoff (New York, Monthly Review, 1970); 'Debating the Labour Aristocracy' and 'The Aristocracy of Labour Revisited', both in Worlds of Labour: Further Studies in the History of Labour (London, Weidenfield and Nicolson, 1984).

63. Foster, Class Struggle and the Industrial Revolution op.cit.; Gray, The Labour Aristocracy in Victorian Edinburgh op.cit. chs.9-10; G. Crossick, An Artisan Elite in Victorian Society (London, Croom Helm, 1978), p.19; F. Hearn, Domination, Legitimation, and Resistance: The Incorporation of the Nineteenth Century English Working Class (Westport Connecticut, Greenwood Press, 1978), p.166-7; T. Lane, The Union Makes Us Strong (London, Arrow Books, 1974), ch.2. Useful critical accounts of the labour aristocracy concept can be found in H.F. Moorhouse, 'The Marxist Theory of the Labour Aristocracy', Social History, Vol.3 No.1 (1978) and 'History, Sociology and the Quiescence of the British Working Class: A Reply to Reid', Social History, Vol.4 No.3 (1979); A. Reid, 'Politics and Economics in the Formation of the British Working Class: A Response to H.F. Moorhouse', Social History, Vol.3 No.3 (1978).

64. Hobsbawm, 'The Labour Aristocracy in Nineteenth Century Britain' op.cit. p.322, 325, 335-42.

65. Foster op.cit. p.29-30.

66. Thompson, The Making of the English Working Class op.cit. p.262.

67. G. Stedman Jones, Languages of Class op.cit. p.62-3.

68. Foster, 'British Imperialism and the Labour Aristocracy' op.cit. p. 24.

69. McLennan, Marxism and the Methodologies of History op.cit. p.228.

70. Poulantzas for example, consistently refers to the struggles of classes, yet his account of the class structure of capitalism is heavily determined by the actions of the dominant rather than the working class. The working class is so subordinate to bourgeois hegemonic and ideological apparatuses that although Poulantzas discusses struggle one wonders what the dominant classes are struggling against. Whilst Poulantzas criticises Miliband for reducing class struggle to class consciousness which, he suggests, overlooks the structural features of capitalism and the fact that these are reproduced through struggle, Poulantzas himself increasingly focuses on the ideological and political dimensions of class struggle. By operating with the Althusserian notion of levels, conceptually separating the levels and dealing for the most part only with the political and ideological, when it comes to actually discussing class struggle Poulantzas, in the last instance, flounders, and is forced to fall back on the ambiguous 'class instinct', analogous to Foucault's 'plebian spirits': 'even under the effects of bourgeois ideology, there still always breaks through in the working class what Lenin referred to as "class instinct"' - see Classes in Contemporary Capitalism (London, NLB, 1975), p.288.

16,-17, 31, and Political Power and Social Classes (London, NLB, 1973), p.124-8. See my note 137 in Chapter Three above and, for a contrast between Poulantzas and Foucault on this, see Jessop State Theory op.cit. p.231-2. This leads Poulantzas into all sorts of difficulties. When he discusses fascism, for example, economic struggles appear to take place only between the various factions of the dominant classes; for the working class, 'in the context of fascism, this "class instinct" cut off from Marxist-Leninist ideology and facing...petty-bourgeois ideology, foundered under the influence of the latter'.

In contrast to Poulantzas, John Holloway and Sol Picciotto focus on the laws of capitalist accumulation, rooting their analysis in political economy and the state as form. They claim that this allows a stronger focus on struggle: 'The very major advance of the "form analysis" approach is...to have established the essential prerequisite for an understanding of the state based on the dialectic of the form and content of class struggle'. 'Introduction: Towards a Materialist Theory of the State' in State and Capital: A Marxist Debate, edited by J. Holloway & S. Picciotto (London, Edward Arnold, 1978), p.8-9. However, Simon Clarke notes that as this argument is developed in the work of Holloway and Picciotto they appear to lose sight of their stress on the class struggle, and instead emphasise the needs of capital rather than the struggle of the working class as the major determining factor. It is the logic of capital rather than the logic of struggle that becomes the issue. S. Clarke, 'The State Debate' in Clarke (ed) The State Debate (London, Macmillan, 1991), p.43.

71. E.P. Thompson, The Making of the English Working Class op.cit.

72. Although Hobsbawm focuses on this later period, he discusses it in decidedly 'culturalist' terms: fish and chips, the cloth cap, football and so on. E. Hobsbawm, 'The Making of the English Working Class 1870-1914' in Worlds of Labour op.cit. p.194-213.

73. N. Poulantzas, State, Power, Socialism (London, NLB, 1978, second edition 1980), p.144.

74. Kay & Mott, Political Order and the Law of Labour op.cit. p.96.

75. And to the extent that they are fossilised remnants we are here engaged in a form of archaeology.

76. Neither would one be concerned to make the initial task of socialism the 'completion' of the bourgeois revolution. Callinicos and Wood are both right to point out this implication.

77. R. F. Hamilton, The Bourgeois Epoch op.cit. p.40.

78. A term I am taking from P. Ginsborg, 'Gramsci and the Era of Bourgeois Revolution in Italy' in Gramsci and Italy's Passive Revolution, edited by J.A. Davis op.cit., p.37; see also Blackbourn's essay in Blackbourn and Eley, The Peculiarities of German History op.cit. p.167.

79. K. Marx, Contribution to the Critique of Political Economy, Preface. See also Chapters 29-31 of Capital, Vol.I op.cit. and the 'Conspectus of Bakunin's Statism and Anarchy' in which Marx castigates Bakunin for understanding nothing of the *social* revolution, only its *political* phrases; FIA p.334. In the Manifesto he describes how the bourgeoisie 'is itself the product of a long course of development, of a series of revolutions in the modes of production and exchange' every step of which 'was accompanied by a corresponding political advance'; Revs1848 p.69.

80. A *rule* of 'scarce one hundred years'; The Communist Manifesto in Revs1848 p.72. Witness too Kautsky's comment that 'the capitalist class rules but does not govern' (though he also suggests that 'it contents itself with ruling the government'), quoted in R. Miliband, The State in Capitalist Society (London, Weidenfield & Nicolson, 1969), p.55.

81. In Blackburn and Eley, The Peculiarities of German History op.cit. p.82; in his essay in the book Blackburn calls this the silent bourgeois revolution. I have adopted the distinction between process and moment from P. Ginsborg, 'Gramsci and the Era of Bourgeois Revolution in Italy' op.cit. Also see Callinicos op.cit. p.99, Wood op.cit. p.8 and Evans op.cit. p.75-81.

82. Lord Althorp, quoted by Marx in 'Lord John Russell' in Articles on Britain (London, Lawrence and Wishart, 1962) p.452. Also see the comment by Lord Russell, given by Marx (p.454) that 'the object of the reform Bill was to increase the predominance of the landed interest, and it was intended as a permanent settlement of a great constitutional question'.

83. Corrigan and Sayer op.cit. p.130.

84. Marx, 'The Chartists' in SE, p.265.

85. Thompson, 'The Peculiarities of the English' op.cit. p.260; The Making of the English Working Class op.cit. p.216-7.

86. Thompson, 'The Peculiarities of the English' op.cit. p.261; W.L. Langer, Political and Social Upheaval 1832-1852 (New York, Harper Torchbooks, 1969), p.51. Actually, there are slight problems with such claims. If money did buy 'power' then it could be argued that the aristocracy would still have a greater claim. It has been argued that in the period 1858-79 the percentage of persons leaving fortunes of £500,000 or more based on land, commerce and finance, and manufacturing were, respectively, 69, 19 and 12. (Hamilton, The Bourgeois Epoch op.cit. p.44). On the other hand, if the figure given includes the capitalist agricultural class then it would be true that the bourgeoisie had 'the money'. The point is surely not about money per se but about the historical dynamics of class power.

87. G. Williams and J. Ramsden, Ruling Britannia (London, Longman, 1990).

88. S.G. Checkland, The Rise of Industrial Society in England 1815-1885 (London, Longman, 1964). For a discussion of the way in which the League used working class agitation through the Chartists see L. Brown, 'Chartists and the Anti-Corn Law League' in Chartist Studies, edited by A. Briggs (London, Macmillan, 1962).
89. Marx, 'Tories and Whigs' in SE, p.257.
90. M. Barratt Brown op.cit. p.34; A. Callinicos, 'Exception or Symptom? The British Crisis and the World System', New Left Review, 169 (1988), p.100-2.
91. Barratt Brown op.cit.; Wood op.cit.
92. Weber has the same difficulty concerning the 'irrational' aspects of the law in England which, given its quintessentially capitalist nature, should have formal rational law. See D. Sugarman, 'In the Spirit of Weber: Law, Modernity and "The Peculiarities of the English"', Institute of Legal Studies, (University of Wisconsin-Madison Law School, 1987).
93. Anderson, 'Origins of the Present Crisis' in English Questions op.cit. p.28.
94. P. Gowan, 'The Origins of the Administrative Elite', New Left Review, 162 (1987); B.S. Silberman, Cages of Reason: The Rise of the Rational State in France, Japan, the United States, and Britain (Chicago, University of Chicago Press, 1993), chs.10-12. R. MacLeod comments on the importance of the authority of 'specialist' administrators vis a vis Parliament in his 'Introduction' to Government and Expertise: Specialists, Administrators and Professionals, 1860-1919, edited by R. MacLeod (Cambridge, Cambridge University Press, 1988).
95. Quoted in N. Gash, Politics in the Age of Peel: A Study in the Technique of Parliamentary Representation, 1830-1850 (Hassocks, Harvester Press, 1977), p.347. Also see Trevelyan's comments to Dehane and Gladstone that 'our high Aristocracy has been accustomed to employ the Civil Establishment as a means of providing for the Waifs and Strays of their Families' quoted in O. MacDonagh, Early Victorian Government, 1830-1870 (London, Weidenfield & Nicolson, 1977), p.199 and W.H. Greenleaf, The British Political Tradition: Volume III A Much Governed Nation, Part 1 (London, Methuen, 1987), p.141. Gladstone saw the scheme as a 'deadly blow at patronage', quoted in Greenleaf p.144. Also see Gowan op.cit. p.20-2.
96. Quoted in MacDonagh ibid. p.203.
97. Claims made by MacDonagh ibid. ch.11.
98. H.C.G. Matthew, Gladstone, 1809-1874 (Oxford, Oxford University Press, 1988), p.85. Gowan draws out well the importance of the Coleridgean aspects of Gladstone's thinking op.cit. p.24-30. Also see Greenleaf op.cit. p.157-9.
99. Gowan op.cit. p.18-9.

100. Silberman op.cit. p.294, 363-8.

101. Gowan op.cit. p.11, 13 & 31-2; Macdonagh op.cit. p.210.

102. Greenleaf op.cit. p.249.

103. Gowan. op.cit. p.32.

104. Gladstone, letter to Lord John Russell, Jan 1854, quoted in V. Cromwell, Revolution or Evolution: British Government in the Nineteenth Century (London, Longman, 1977), p.139-40.

105. In fact the key period to be examined in tracing the demise of the political power of the aristocracy would be roughly 1880 to the First World War. For the increasing democratisation of the British state from 1867 included not just an extended franchise but also the end of corruption (The Corrupt Practices Act 1883), equal electoral districts (1885) wiping out the almost feudal constituency structures and making it necessary to organise in national and efficiently run political parties. The necessity of modern party politics after 1867 was as much a determinant as the outlawing of corruption in wiping out the old informal network whereby political power was assured. The reform of the House of Lords in 1911, following Lloyd George's budget of 1909, can be seen as the culmination of this process. See G.D. Phillips, The Diehards: Aristocratic Society and Politics in Edwardian England (Cambridge MA & London, Harvard University Press, 1979). The First World War saw the final death agonies of the aristocracy, illustrating as it did the obsolescence of the aristocratic frame of mind. British military thinking was still dominated by aristocratic virtues and dispositions, enough to lend support to the Anderson-Nairn thesis. For this reason the British resisted the introduction of the machine-gun as a form of weapon on the battlefields of Europe. Though they were aware of the potential for destruction contained in modern technology, having used the machine-gun in Africa, a European war was to be a 'real' war fought on 'real' terms: with bravery, honour and the skill of the human form; a gentleman's war. The Germans thought otherwise, adopted the new technology, and millions of lives were lost. After this the aristocracy and its frame of mind were, for all practical purposes, removed from the military elite. See N. Dixon, On the Psychology of Military Incompetence (London, Futura, 1979); J. Ellis, The Social History of the Machine Gun (London, Cresset, 1987); J. Keegan, The Face of Battle (Harmondsworth, Penguin, 1978); W. McNeill, The Pursuit of Power (Oxford, Blackwell, 1983); M. Middlebrook, The First Day on the Somme (Harmondsworth, Penguin, 1984). In his history of the aristocracy J.V. Beckett notes that the Duke of Westminster turned up on the Front Line in November 1914 with his own private army, The Aristocracy in England 1660-1914 (Oxford, Blackwell, 1986), p.467. For a general discussion about the first world war, technology and the birth of the modern age see M. Eksteins, Rites of Spring: The Great War and the Birth of the Modern Age (London, Black Swan, 1990), especially Act II.

106. W. Bagehot, The English Constitution (1867) op.cit. He points out the 'traditional' parts are there to *take* the multitude (p.65).

107. Quoted in Corrigan and Sayer op.cit. p.153 and G. Kay & J. Mott, Political Order and the Law of Labour op.cit. p.106.

Chapter Five

1. P. Colquhoun, quoted in M. Dean, The Constitution of Poverty (London, Routledge, 1991), p.174.
2. J. Bentham, 'Essays on the Poor Law' quoted in L.C.Boralevi, Bentham and the Oppressed (Berlin, European University Institute, 1984), p.98 and in J.R.Poynter, Society and Pauperism (London, Routledge, 1969), p.119; emphasis in original.
3. Poor Law Report of 1834 ed. S.G. & E.O.A. Checkland (Harmondsworth, Penguin, 1974), p.334, emphasis in original. Defending the Act three years after its passage Chadwick argued that 'The Commissioners might have added that poverty...is the natural, the primitive, the general and unchangeable state of man; that as labour is the source of wealth, so is poverty the source of labour. Banish poverty, you banish wealth. Indigence, therefore, and not poverty is the evil, the removal of which is the proper object of the Poor laws. Indigence may be provided for...but all attempts to extirpate poverty can have no effects but bad ones. Quoted in Dean, The Constitution of Poverty op.cit. p.175.
4. As discussed in relation to Marx and Hegel in Chapter One.
5. R. Tawney, Religion and the Rise of Capitalism (Harmondsworth, Penguin, 1938), p.269; M. Blaug, 'The Myth of the Old Poor Law and the Making of the New', Journal of Economic History, (1963). But see his comments in 'The Poor Law Re-examined', Journal of Economic History, (1964).
6. S.G & E.O.A. Checkland, 'Introduction' to The Poor Law Report of 1834 op.cit.
7. D. Fraser, The Evolution of the British Welfare State (London, Macmillan, 1973), p.39; G. Himmelfarb, The Idea of Poverty (London, Faber, 1985), p.163.
8. Poor Law Report op.cit. p.82-128.
9. Ibid. p.335.
10. Fraser op.cit p.41. Implicit here is the distinction between poor labourers and paupers, bound up with the word 'poor' itself. The Poor Law Commissioners resisted using the same word 'poor' for independent labourers and those dependent on public funds, for this was said to confuse the poor themselves, in that they failed to realise that not everyone was entitled to public funds, indeed they expected that because they were called 'poor' they were entitled to such funds. For this reason the Commissioners claimed that the Old Poor Law of 1601 had never intended to give relief to 'industrious persons' but only the infirm. Himmelfarb suggests that this is not the case (op.cit. p.160), that the Elizabethan Poor Laws were in fact genuine 'poor' laws in that they did not make any sharp distinction between poor and pauper, perceiving instead the poor, dependent and independent, as part of a continuum within an undifferentiated body of 'labouring poor'. Nonetheless the central concern was that the system as it had developed since 1601

was too confused and too susceptible to systematic abuse. This confusion and abuse was to a large degree due to the confusion over who should be eligible for public relief, in turn due to confusion over the meaning of the word 'poor'.

11. Poor Law Report op.cit. p.337.

12. Ibid. p.119.

13. As Thompson notes, even the most inventive state would have been hard put to create institutions simulating conditions worse than those outside - The Making of the English Working Class (Harmondsworth, Penguin, 1968), p.295.

14. M.A. Crowther, The Workhouse System 1834-1929 (London, Methuen, 1983), p.40-41.

15. S.E. Finer The Life and Times of Sir Edwin Chadwick (London, Methuen, 1952) p.85.

16. Poor Law Report op.cit. p.418-9.

17. Fraser op.cit. p.49; see also Crowther op.cit. p.36.

18. Checkland & Checkland 'Introduction' to The Poor Law Report of 1834 op.cit. p.42-43.

19. G. Kay & J. Mott, Political Order and the Law of Labour (London, Macmillan, 1982) p.105-6.

20. There is not the space to deal with all the debates concerning the Poor Law here. The central debates can be found in the following: Fraser op. cit.; P.Thane, The Foundations of the Welfare State (London, Longman, 1982); D. Roberts, Victorian Origins of the British Welfare State (New Haven, Yale University Press, 1960). Fraser contains a useful documentary appendix and bibliography.

21. N. Ginsberg, Class, Capital and Social Policy (London, Macmillan, 1979), p.51.

22. See for example F.F. Piven & R.A. Cloward, Regulating the Poor (London, Tavistock, 1974); J.L.Hammond & B.Hammond, The Village Labourer (London, Longman, 1966); C. Jones & T.Novak, 'The State and Social Policy' in Capitalism, State Formation and Marxist Theory, edited by P. Corrigan (London, Quartet, 1980); Checkland & Checkland op.cit.

23. E. Hobsbawm, Industry and Empire op.cit. p.73; Thompson, Making of the English Working Class op.cit. p.737.

24. There is some disagreement over how many references there are. Himmelfarb suggests there are none, the Checklands claim there are many. The answer would appear to be in between, though it does depend on the interpretation one gives to certain passages in the Report.

25. Himmelfarb op.cit. p.158.
26. Poor Law Report op.cit. p.148-9.
27. Fraser op.cit. p.37-38; Piven and Cloward op.cit p.21.
28. Poor Law Report op.cit. p.140.
29. Ibid. p.141.
30. Ibid. p.156.
31. See Marx, Grundrisse (Harmondsworth, Penguin, in association with New Left Review, 1973), p.83.
32. Fraser op.cit. p.38.
33. R. Richardson, Death, Dissection and the Destitute (London, Penguin, 1988), p.266; Piven & Cloward op.cit. p.20 n.33.
34. Poor Law Report op.cit. p.114.
35. Ibid. p.82.
36. K. Williams, From Pauperism to Poverty (London, Routledge, 1981), p.56.
37. Ibid. p.61-62.
38. Ibid. p.65; see also Dean op.cit. p.166-8.
39. Williams op.cit. Statistical Appendix, section B Table 4.5 p.158-63.
40. K. Marx, Capital, Vol.I op.cit. ch.28.
41. Checkland & Checkland op.cit. p.43.
42. Finer op.cit. p.77.
43. Roberts op.cit. p.37-38. The problems surrounding the use of 'private' will not be addressed here, suffice to say that the concern over the 'private' sphere is not the point I am seeking to draw out from this passage.
44. Richardson, Death, Dissection and the Destitute op.cit. p.108, 191. The Anatomy Act is closely connected to the Poor Law. By allowing the bodies of those who died in the workhouse to be used for dissection the Act turned the status of the corpses of the poor into that of murderers (those usually used for dissection). It also imposed a cash price on even the corpses of the poor, creating a market value for their bodies even when dead. Richardson is thus correct to describe the Act as 'an advance clause to the New Poor Law' (p.266): see also G.Williams, 'Preface' to The Early Chartists, edited by D. Thompson (London,

Macmillan, 1971).

45. B. Supple, 'Legislation and Virtue: An Essay on Working Class Self-Help and the State in the Early Nineteenth Century' in Historical Perspectives: Studies in English Thought and Society, edited by N. McKendrick (London, Europa, 1974).

46. J.L. Symons, 1849, quoted in P. Squires, Anti-Social Policy: Welfare, Ideology and the Disciplinary State (Hemel Hempstead, Harvester, 1990), p.74.

47. Kay and Mott, Political Order and the Law of Labour op.cit. p.104; J.E.Cronin, The Politics of State Expansion: War, State and Society in Twentieth-Century Britain (London, Routledge, 1991) p.23; Dean, The Constitution of Poverty op.cit. p.175.

48. Kay and Mott ibid. p.106.

49. Cronin, The Politics of State Expansion op.cit. p.19-23; Roberts, Victorian Origins of the Welfare State op.cit. p.43. On the 'nineteenth century revolution in government' see V. Cromwell Revolution or Evolution: British Government in the Nineteenth-Century (London, Longman, 1977); O. MacDonagh, 'The Nineteenth-Century Revolution in Government: A Reappraisal', The Historical Journal, Vol.1 No.1 (1958); H.Parris, 'The Nineteenth-Century Revolution in Government: A Reappraisal Reappraised', The Historical Journal, Vol.3 No.1 (1960).

50. Roberts ibid. p.93-95.

51. Roberts ibid. p.109-110; Finer, Life and Times of Sir Edwin Chadwick op.cit. p.88-90; Kay & Mott op.cit. p.106.

52. Roberts op.cit. p.113-4; Kay & Mott op.cit. p.98, 136.

53. A. Digby, Pauper Palaces (London, Routledge, 1978), p.75; see also Finer op.cit. p.90; Roberts op.cit p.116; Fraser op.cit. p.48-9.

54. Finer op.cit. p.88.

55. M. Foucault, Discipline and Punish p.197.

56. P. Squires, Anti-Social Policy: Welfare, Ideology and the Disciplinary State (Hemel Hempstead, Harvester, 1990), p.49, 72, 83; see also D.Melossi, 'Institutions of Social Control and Capitalist Organisation of Work' in Capitalism and the Rule of Law, edited by B. Fine et al. (London, Hutchinson, 1979). The reading of the New Poor Law as 'essentially' disciplinary stretches to non-Foucauldians too; see, for example, Crowther, The Workhouse System, 1834-1929 (London, Methuen, 1981), p.65-66.

57. For example, Kay-Shuttleworth comments that the workhouses ought to be 'as prison-like as possible'. Tufnell comments that 'at present their prison-like appearance...inspires a solitary dread of them'. One Commissioner claims that 'our

object...is to establish therein a discipline so severe and repulsive as to make them a terror to the poor and prevent them from entering'. See Crowther op.cit. p.41; Thompson op.cit. p.295. On workhouses and prisons see D.Melossi & M.Pavarini, The Prison and the Factory (London, Macmillan, 1981), p.33-47; Crowther op.cit. p.65; S.McConville, A History of English Prison Administration Volume 1 1750-1877 (London, Routledge, 1981), p.238-241, 354-5.

58. Bentham saw his work on pauper management as part of his wider work on the Panopticon. The full title of Bentham's essay is 'Panopticon; or, the Inspection House, containing the Idea of a new Principle of Construction applicable to any Sort of Establishment, in which persons of any description are to be kept under Inspection and in particular to Penitentiary-House, Prisons, Houses of Industry, Work-Houses, Poor-Houses, Manufactories, Mad-Houses, Lazarettos, and Schools: with a Plan of Management adapted to the Principle'. It is not difficult then to understand the New Poor Law through Foucault's reading of the Panopticon. See M. Dean, The Constitution of Poverty op.cit. For his influence on figures behind the New Poor Law see Finer, The Life and Times of Sir Edwin Chadwick op.cit.

59. M. Hewitt, 'Bio-politics and Social Policy: Foucault's Account of Welfare' in M.Featherstone et.al (eds) The Body (London, Sage, 1991), p.242.

60. J.B. Conacher (ed.) The Emergence of British Parliamentary Democracy in the Nineteenth Century (London, John Wiley, 1971), p.75-6.

61. M. Bentley, Politics Without Democracy 1815-1914 (London, Fontana, 1984), p.186.

62. H.F. Moorhouse, 'The Political Incorporation of the British Working Class: An Interpretation', Sociology, 7 (3) (1973), p.345.

63. The phrase is Lord Derby's, quoted in P. Gowan, 'Origins of the Administrative Elite', New Left Review, 162 (1987), p.31 and A. Arblaster, The Rise and Decline of Western Liberalism (Oxford, Blackwell, 1984), p.273.

64. Moorhouse, op.cit.

65. Conacher op.cit. p.128, 167; Moorhouse op.cit. p.346.

66. For a discussion of the importance of war in shaping democracy see G. Therborn, 'The Rule of Capital and the Rise of Democracy', New Left Review, 103 (1977). I am not suggesting that Britain was a 'democracy by defeat'.

67. The formulations in this last paragraph have been developed from a number of sources. On classification see T. Richards, The Imperial Archive: Knowledge and the Fantasy of Empire (London, Verso, 1993), p.6 and I. Hacking, The Taming of Chance (Cambridge, Cambridge University Press, 1990). Poulantzas writes that 'statistical bodies cannot be treated as mere mystification, but constitute elements of state knowledge to be used for the purposes of political strategy' (State, Power, Socialism op.cit. p.32). S. Clarke comments on the decomposition of the working

class in 'The State Debate' in The State Debate, edited by S. Clarke op.cit. p.33. On 'community' see E. & S Yeo, 'On the Uses of "Community": From Owenism to the Present' in New Views of Co-operation, edited by S. Yeo (London, Routledge, 1988), C. Cockburn, The Local State: Management of Cities and People (London, Pluto, 1977), p.158-63, and, on 'imagined community' in particular, B. Anderson, Imagined Communities (London, Verso, 1983).

68. F.D. Maurice, The Workman and the Franchise (1866) (New York, Augustus Kelley, 1970), p.208.

69. J.M. Barbalet, Citizenship: Rights, Struggle and Class Inequality (Milton Keynes, Open University Press, 1988), p.85.

70. As is widely argued. To mention just a few: Barbalet ibid. p.84; Bentley op.cit p.369; Moorhouse op.cit.; M. Pearce & G. Stewart, British Political History 1867-1990: Democracy and Decline (London, Routledge, 1992), p.218; Therborn 'The Rule of Capital and the Rise of Democracy' op.cit.

71. T.H. Marshall, Citizenship and Social Class (1950). Page references to the 1992 edition Marshall and T. Bottomore, Citizenship and Social Class (London, Pluto, 1992).

72. Ibid. p.18, 40.

73. See for example, Marshall ibid. p.49; Barbalet, Citizenship: Rights, Struggle and Class Inequality op.cit. p.31, 77; Bottomore, 'Citizenship and Social Class, Forty Years On' in Marshall & Bottomore op.cit. p.73; Turner, Citizenship and Capitalism: The Debate Over Reformism (London, Allen & Unwin, 1986).

74. Op.cit. p.25.

75. Barbalet op.cit. p.31, following A. Giddens, Central Problems in Social Theory (London, Macmillan, 1979).

76. Marshall op.cit. p.20.

77. Ibid. p.28.

78. Ibid. p.10.

79. Ibid. p.26-7, 40; A. Giddens, Profiles and Critiques in Social Theory (London, MacMillan, 1982), p.172; Barbalet op.cit p.22-3.

80. Marshall op.cit. p.21, 25-6. When later in the essay in talks of the return to status this is done in a strictly limited sense, namely that there are differences in salary levels and workers are organised into groups; in other words, he does not really address the central issue of status, as we shall see below. The same can be found in B. Turner 'Contemporary Problems in the Theory of Citizenship' in Citizenship and Social Theory, edited by B. Turner op.cit.. p.5.

81. Giddens Profiles and Critiques in Social Theory op.cit. p.171-3.
82. K. Williams, From Pauperism to Poverty op.cit. p.98.
83. Ibid. p.101; G. Stedman Jones, Outcast London (Harmondsworth, Penguin, 1974), p.271.
84. Stedman Jones, op.cit p.274.
85. Ibid. p.271.
86. C. Rowan, 'Child Welfare and the Working Class Family' in M.Langan & B.Schwarz (eds), Crises in the British State, 1880-1930 (London, Hutchinson, 1985).
87. Stedman Jones op.cit. p.268.
88. Fraser The Evolution of the British Welfare State op.cit. p.116.
89. Crowther The Workhouse System op.cit. p.72-73.
90. Fraser op.cit. p.121-2.
91. Foucault, Discipline and Punish op.cit. p.191.
92. J. Donzelot, The Policing of Families (London, Hutchinson, 1979), p.117-122, 66-68.
93. G. Procacci, 'Social Economy and the Government of Poverty' in The Foucault Effect, edited by G. Burchell, C. Gordon & P. Miller (Hemel, Harvester, 1991), p.165; P. Squires, Anti-Social Policy op.cit. p.96-98; see also p.56-7.
94. Squires, *ibid.*, for example, but also J. Fido, 'The Charity Organisation Society and Social Casework in London 1869-1900' in A.P. Donajrodzki (ed.) Social Control in Nineteenth Century Britain (London, Croom Helm, 1977); B. Webb, My Apprenticeship (London, Longmans, Green & Co., 1929), p.177; K. Woodroffe, From Charity to Social Work, in England and the United States (London, Routledge, 1962), ch.2.
95. B. Bosanquet, The Philosophical Theory of the State (London, Macmillan, 1899). The relation between the Idealists and the C.O.S., and thus the importance of the state, is drawn out in A. Vincent & R. Plant, Philosophy, Politics and Citizenship: The Life and Thought of the British Idealists (Oxford, Blackwell, 1984), ch.6.
96. Quoted in Williams From Pauperism to Poverty op.cit. p.130.
97. Ibid. p.130-134; Crowther op.cit. p.87.

98. M. Barrett & M. McIntosh, The Anti-Social Family (London, Verso, 1982), p.47.
99. L. Stone, The Family, Sex and Marriage in England 1500-1800 (London, Penguin, 1977), p.28.
100. R. Williams, Keywords (London, Fontana, 1976), p.108-11.
101. State, Power, Socialism (London, Verso, 1988), p.72.
102. As Barrett and McIntosh point out (op.cit. p.100-1), Donzelot's own answer to this question is: because.
103. E. Zaretsky, Capitalism, The Family, and Personal Life (London, Pluto Press, 1976), p.61.
104. B.B. Gilbert, The Evolution of National Insurance in Great Britain (London, Michael Joseph, 1966), p.32-34; Stedman Jones op.cit. p.291-96.
105. Stedman Jones Outcast London op.cit. p.292; some have dismissed the riot as merely culminating in the increase in donations to the Lord Mayors Fund - see G.D.H. Cole & R.Postgate, The Common People (London, Methuen, 1961), p.422. The following pages will show why this dismissal is completely unjustified.
106. Gilbert op.cit. p.38.
107. Fraser op.cit. p.131; Gilbert op.cit. p.38-39, 234; M.Langan, 'Reorganising the Labour Market: Unemployment, the State and the Labour Movement 1880-1914' in Crises in the British State 1880-1930, edited by M. Langan & B. Schwarz op.cit., p.110.
108. A. Marshall to the Royal Commission on the Aged Poor, quoted in Gilbert op.cit. p.27 note 7; also quoted in Fraser op.cit. p.134.
109. Langan op.cit. p.108; Kay & Mott op.cit. p.107-108; Stedman Jones op.cit. p.287. Also see J. Tomlinson, Problems of British Economic Policy 1870-1945 (London, Methuen, 1981), ch.1 and R. Davidson, Whitehall and the Labour Problem in Late-Victorian and Edwardian Britain (London, Croom Helm, 1985), p.42. This is not to say that 'unemployment' and 'unemployed' did not exist within the semantic frame of reference before then. Thompson, Making of the English Working Class op.cit. p.853-4n, points out that these categories are all to be found in trade union, radical and Owenite writings of the 1820s and 30s, but this misses the point, which is that they become *categories of state administration* from the 1880s. Moreover, it is only from the 1880s that 'unemployed' is separated from 'idle', that is, describes not a personal condition but a social situation. See R. Williams, Keywords op.cit. By stressing the role of the state in the articulation of unemployment as an administrative category this account differs from those using a more Foucauldian terminology; see, for example, W. Walters 'The Discovery of "Unemployment": New Forms for the Government of Poverty', Economy and

Society Vol.23 No.3 (1994).

110. This is not to say that administration is only of individuals, as later sections shall make clear.

111. Gilbert op.cit. p.258-262; Langan op.cit. p.110-111.

112. Gilbert op.cit. discusses the wrangling over the precise level of the contributions p.276-277.

113. W. Churchill, Daily Mail 16 Sept 1909, quoted in Langan 'Reorganising the Labour Market' op.cit. p.112; also quoted in Jones & Novak op.cit. p.166.

114. Quoted in Fraser op.cit. p.129 and in R.Miliband, Parliamentary Socialism (London, Merlin, 1972), p.37 note 1.

115. Quoted in Gilbert op.cit p.253.

116. Langan op.cit. p.118; see also p.114-115. Administration of and by trades unions is considered in more detail below.

117. A. Marshall, Principles of Economics (London, Macmillan, 1890, sixth edition 1910), p.714.

118. T.H. Marshall, Citizenship and Social Class (London, Pluto, 1992); S. Webb quoted in Gilbert op.cit. p.25-6.

119. V. Navarro, Class Struggle, The State and Medicine: An Historical and Contemporary Analysis of the Medical Sector in Great Britain (London, Martin Robertson, 1978), p.11.

120. J.R. Hay, The Origins of the Liberal Welfare Reforms 1906-1914 (London, Macmillan, 1975).

121. H. Pelling, Popular Politics and Society in Late Victorian Britain (London, Macmillan, 1968), p.6-13.

122. Ibid. p.2.

123. Ibid. p.12-3.

124. P. Thane, 'The Working Class and State 'Welfare' in Britain 1880-1914', The Historical Journal, Vol.27 (1984); see also Gilbert op.cit. p.182-198; D. Green, Working-Class Patients and the Medical Establishment: Self-Help in Britain from the Mid-Nineteenth Century to 1948 (Aldershot, Gower, 1985).

125. Gilbert op.cit. chs. 4 & 6.

126. Quoted in Green, Working-Class Patients and the Medical Establishment op.cit. p.111.

127. R. Miliband, Capitalist Democracy in Britain (Oxford University Press, 1982); T. Clarke & L. Clements (eds.) Trade Unions Under Capitalism (Sussex, Harvester, 1978) especially the essays by Anderson, Clarke, Hyman and Fryer. Eldridge and Fox.
128. O. MacDonagh, 'Pre-transformations: Victorian Britain' in Law and Social Control, edited by E. Kamenka & A.E-S. Tay (London, Edward Arnold, 1980), p.127.
129. Quoted in MacDonagh *ibid.* p.128.
130. Abel-Smith & Stevens, Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965 (London, Heinemann, 1967), p.114; K.W. Wedderburn, The Worker and the Law 2nd edition (Harmondsworth, Penguin, 1971), p.26-30.
131. Wedderburn *ibid.* p.24-25, 345-350; O. Kahn-Freund, Labour and the Law 3rd edition (London, Stevens, 1983), p.89, 158-59, 299.
132. E. M. Wood, The Pristine Culture of Capitalism (London, Verso, 1991), p.74-5.
133. Miliband Capitalist Democracy in Britain (Oxford, Oxford University Press, 1982), p.54; P. Anderson, 'The Limits and Possibilities of Trade Union Action' in Trade Unions Under Capitalism *op.cit.* p.335.
134. R. Davidson, Whitehall and the Labour Problem in Late-Victorian and Edwardian Britain (London, Croom Helm, 1985); also E. Higgs, 'The Struggle for the Occupational Census 1841-1911' in Government and Expertise: Specialists, Administrators, and Professionals, edited by R. MacLeod (Cambridge, Cambridge University Press, 1988), p.82.
135. Davidson *ibid.* p.258.
136. E. Hobsbawm, Labouring Men: Studies in the History of Labour (New York, Anchor Books, 1967), p.397-8.
137. H. Maine, Ancient Law (London, Dent & Sons, 1917).
138. F. Engels, The Origin of the Family, Private Property and the State (London, Lawrence and Wishart, 1972), p.142.
139. A.V. Dicey, An Introduction to the Study of the Law of the Constitution 10th edition (London, MacMillan, 1959), p.203, see also ch.12 where he contrasts the rule of law with *droit administratif*; see W.I. Jennings. The Law and the Constitution (London, University of London Press. 1933), appendix II. Of course it is quite clear that there is now a vast body of administrative law. Yet, as C.H. Sisson notes, most British administrators would find it difficult to say what it is. See The Spirit of British Administration (London, Faber, 1959), p.49.

140. P.S. Atiyah, The Rise and Fall of Freedom of Contract (Oxford, Clarendon Press, 1979), Part III.

141. H.W. Arthurs, 'Without the Law': Administrative Justice and Legal Pluralism in Nineteenth-Century England (Toronto, University of Toronto Press, 1985), p.103-5.

142. Ibid. p.109.

143. See B. Abel-Smith & R. Stevens, Lawyers and the Courts op.cit. p.115-6; Atiyah op.cit. p.697-708; H.W. Arthurs, 'Special Courts, Special Law: Legal Pluralism in Nineteenth Century England' in Law, Economy and Society: Essays in the History of English Law 1750-1914, edited by D. Sugarman & G.R. Rubin (Oxon, Professional Books, 1984), p.404-411.

144. Abel-Smith & Stevens ibid. p.117; E.C.S. Wade & A.W. Bradley, Constitutional Law (Seventh Edition) (London, Longmans, 1965), p.602, 697; Sugarman & Rubin, 'Introduction: Towards a New History of Law and Material Society in England, 1750-1914' in Law, Economy and Society op.cit. p.74; J. Fulbrook, Administrative Justice and the Unemployed (London, Mansell, 1978). ch.8. The same tendency can be found in developments in welfare provision throughout the twentieth century. Beveridge, for example, was aware that benefits granted by the social security system would provide benefits below those for similar damages in courts of law. The solution was that beneficiaries give up any claim to recourse to the courts. See D.E. Ashford, 'The Constitution of Poverty' in State Theory and State History, edited by R. Torstendahl (London, Sage, 1992), p.153-4.

145. K. Renner, The Institutions of Private Law and Their Social Functions (London, Routledge, 1949), p.297-8.

146. G. Kay, 'Right and Force: A Marxist Critique of Contract and the State' in Value, Social Form and the State, edited by M. Williams (London, Macmillan, 1988), p.130.

147. A.V. Dicey, Lectures on the Relation Between Law and Public Opinion During the Nineteenth Century (1905) (London, MacMillan, 1914), p.283-84; see also the discussion in O. Kahn-Freund, 'A Note on Status and Contract in British Labour Law', The Modern Law Review, 30 (1967), reprinted in his Selected Writings (London, Stevens, 1978). Dicey was writing initially (in 1905) in response to the Workmens Compensation Act (1897) and then to the Act of 1906 discussed above in this chapter, but also in response to the rise of collectivism generally.

148. MacDonagh 'Pre-transformations' op.cit. p.131; see also Atiyah, The Rise and Fall of Freedom of Contract op.cit. p.716-17; and B. Veneziani, 'The Evolution of the Contract of Employment' in The Making of Labour Law in Europe, edited by B. Hepple (London, Mansell, 1986).

149. Atiyah ibid. p.725.

150. Kay & Mott, Political Order and the Law of Labour op.cit. p.115; see also R.W. Rideout, Principles of Labour Law (London, Sweet and Maxwell, 1979), p.238.

151. Quoted in Wedderburn op.cit. p.172.

152. Kay and Mott op. cit. p.115. The TUC have also been consistently reluctant to turn compensation tribunals into judicial bodies, or to allow legal representation: see D.E. Ashford, 'The Constitution of Poverty' op.cit. p.163.

153. Atiyah op.cit. p.726.

154. Useful here is David Sugarman's discussion of Weber's difficulties concerning the rational and irrational in English law, in 'In the Spirit of Weber: Law, Modernity and "The Peculiarities of the English"' Institute of Legal Studies (University of Wisconsin-Madison Law School, Working Papers Series 2, 1987).

155. See Wade & Bradley Constitutional Law op.cit. p.698. On the 'quasi-legislative' and 'quasi-judicial' nature also see p.602, 622, 703. Also see Arthurs, 'Without the Law' op.cit. p.89, 113-117, 132 and his 'Special Courts, Special Law' op.cit. p.382, 406; Dicey An Introduction to the Study of the Law of the Constitution op.cit. p. 390, 494; Kay & Mott Political Order and the Law of Labour op.cit p.109. On the administrator as legislator see Sisson, The Spirit of British Administration op.cit. p.71-3. On the differences between Britain and other European countries, especially in relation to administration vis a vis courts see T. Ramm, 'Workers' Participation, the Representation of Labour and Special Labour Courts' in The Making of Labour Law in Europe, edited by B. Hepple (London, Mansell, 1986). For a discussion of this in the context of the development of specialists in the heart of the state see R. MacLeod, 'Introduction' to Government and Expertise op.cit.

156. D. Roberts, Victorian Origins of the British Welfare State (Connecticut, Yale University Press, 1960), p.113-4.

157. Ashford, 'The Constitution of Poverty' op.cit. p.156. See also, as examples, *Chandler vs. DPP* (1964) in which Lord Reid suggests that the judiciary is excluded from reviewing certain areas 'proper' to government. The most recent example of report is the judicial review of the GCHQ case in which the courts felt that it was for the government and not the courts to decide on issues concerning national security, and that it was for the government and not the courts to decide whether national security outweighed procedural administrative requirements. Likewise Lord Goff in *R v Board of Visitors of HM Prison, The Maze, ex parte Hone* (1988) argued that the general right of legal representation was not appropriate for a body exercising a disciplinary jurisdiction. See P. Fitzpatrick, The Mythology of Modern Law (London, Routledge, 1992), p.156-159; also Arthurs, 'Special Courts, Special Law' in Sugarman & Rubin op.cit. p.407.

158. For their 'mythic integration' see Fitzpatrick *ibid.* p.146-50 and Sisson, The Spirit of British Administration *op.cit.* p.77 & 79; Sisson notes (p.23) the administrators task is 'nothing less than the preservation of the state'. See also Kay and Mott, Political Order and the Law of Labour *op.cit.* p.93-97. This integration is most notable concerning 'disciplinary' institutions. Aside from the point made in note 157, the fact is that as administration develops persons could be incarcerated even when they had committed no crime. Focusing on the prisoners mode of behaviour rather than any offence s/he may have committed allows the incarceration of persons who have committed no public offence. See D. Garland, Punishment and Welfare: A History of Penal Strategies (Aldershot, Gower, 1986). p.190. As Garland notes: 'One finds that the constant tendency of penological texts and reports is to displace arguments from the [judicial sphere] to the [administrative sphere], stressing that any recommendations they make should be understood and evaluated in administrative rather than judicial terms'.

159. E.B. Pashukanis, Law and Marxism: A General Theory (1924) (London, Ink Links, 1978). Also available (in what is generally agreed to be a poor translation) in Soviet Legal Philosophy, edited by J. Hazard (Cambridge Mass., Harvard University Press, 1951). The latter also contains Pashukanis' 'self-criticism' of 1930 'The Soviet State and the Revolution in Law'.

160. C.J. Arthur, 'Towards a Materialist Theory of Law', Critique, 7 (1976); P. Corrigan & D. Sayer, 'How the Law Rules: Variations on Some Themes in Karl Marx' in Law, State and Society, edited by B. Fryer et.al. (London, Croom Helm, 1981) and the Introduction to the same volume by Fryer et. al.

161. See for example the critique by S. Lee in Judging Judges (London, Faber, 1988) of the classic argument concerning the biased content of the legal system by J.A.G. Griffith in The Politics of the Judiciary (London, Fontana, 1977).

162. Pashukanis *op.cit.* p.121.

163. F. Jakubowski, Ideology and Superstructure in Historical Materialism (London, Allison and Busby, 1976), p.51, 94; Corrigan & Sayer *op.cit.*; I.D. Balbus, 'Commodity Form and Legal Form: An Essay on the "Relative Autonomy" of the Law', Law and Society Review, Vol.1 No.3 (1977); B. Edelman, Ownership of the Image (London, Routledge, 1979); B. Fine 'Law and Class' in Capitalism and the Rule of Law, edited by B. Fine et. al. *op.cit.*; G. Kay & J. Mott, Political Order and the Law of Labour *op.cit.*; D. Wells Marxism and the Modern State (Brighton, Harvester, 1981). Possibly most significantly it plays a role in the work of the 'state derivation' theorists that emerged in the 1970s - see the collection in State and Capital: A Marxist Debate, edited by J. Holloway and S. Picciotto (London, Edward Arnold, 1978), in particular the essay by B.Blanke, U.Jurgens and H.Kastendick.

164. As well as Pashukanis here, see Kay & Mott *ibid.*; and Balbus *ibid.*

165. See P. Hirst, On Law and Ideology (London, MacMillan, 1979). p.96-163 and his 'Introduction' to Edelman, Ownership of the Image op.cit.; S. Redhead, 'The Discrete Charm of Bourgeois Law: A Note on Pashukanis', Critique, 9 (1978); C. Sumner, Reading Ideologies: An Investigation into the Marxist Theory of Ideology and Law (London, Academic Press, 1979), p.249-53; Fryer et.al. op.cit; Sugarman and Rubin, 'Introduction: Towards a New History of Law and Material Society in England, 1750-1914' in Law, Economy and Society: Essays in the History of English Law 1750-1914 op.cit. n.423. Sugarman makes the same point in his 'Law, Economy and the State in England' in Legality, Ideology and the State, edited by D. Sugarman (London, Academic Press, 1983), p.260.

166. A point that a number of writers have recognised. See the passage from Karl Renner quoted above in this chapter; also see F. Neumann, The Rule of Law: Political Theory and the Legal System in Modern Society (Leamington Spa, Berg, 1986), p.20-22; N. Bobbio, Democracy and Dictatorship (Cambridge, Polity, 1989), p.10.

167. Pashukanis op.cit. p.94.

168. Ibid. p.143.

169. In Hazard (ed) op.cit. For discussions see Sumner and Redhead, both op.cit.

170. Foucault, Discipline and Punish p.222.

171. Redhead, 'The Discreet Charm of Bourgeois Law' op.cit.

Conclusion

One outcome of the increasing centrality of administration to the development of state power in Britain after 1832 is that a rethinking of the state-civil society distinction becomes necessary, a requirement that has been at the heart of political theory in general and Marxism in particular. We have argued that rather than rejecting the state-civil society distinction, it needs to be reworked. Whilst state and civil society must be conceptually held apart and yet simultaneously brought together, this must now be done through the category of political administration. One can only understand the development of state power in Britain after 1832 through an understanding of the network of administrative apparatuses which serve to police civil society, subsuming class struggle and mediating contradiction. The constant threat that civil society will be torn apart by its internal antagonisms requires that the state administer these antagonisms, to the point of constituting the organisations and subjects of struggle as part of the very action of the state itself.

Political administration thus illustrates the constitutive power of the state, and is simultaneously a major development of that power. It is *administration* because it deals with the fossilised remnants of the dead struggles of the working class and through them seeks to govern the affairs of civil society, carrying through the tasks of state power. It is *political* because it takes working class struggles and transforms them into bodies constituted by the state, abstracting them into a state form and nullifying their revolutionary potential. Political administration then becomes a key theoretical category through which historical materialism can conceptualise state power in Britain from 1832. One advantage of this is that it encourages the use of *both* state-civil society *and* base-superstructure models rather than a rejection of one in favour of the other. For the argument involves the retention of state and civil society as explicit historical categories. Far from implying the rejection of base and superstructure, the use of state and civil society involves its more sophisticated usage, in the process avoiding the problems of crude economic reductionism. For it at once asserts the primacy of class struggle within civil society as the motor force behind historical change - the state develops political administration as a mechanism for subsuming struggle and mediating

conflict - yet at the same time recognises and stresses the constitutive power of the state. To advance the argument yet further, state and civil society can only be understood as materialist categories and historical materialism must necessarily utilise the state-civil society distinction. It is only by using the two models in conjunction that either of them work and, given state development in Britain from 1832, it is only by rethinking them through the category of political administration that they make sense.

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